

Chapter 3: Misdemeanor Traffic Offenses

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Part A—Introduction

3.1 Scope Note

The principal source of Michigan traffic law is the Motor Vehicle Code. The Motor Vehicle Code clearly distinguishes the misdemeanor traffic offense from the felony and civil infraction. “It is a misdemeanor for a person to violate this act, unless that violation is by this act or other law of the state declared to be a felony or a civil infraction.” In other words, if the statute fails to declare the type of offense, it is deemed to be a misdemeanor. MCL 257.901(1).

The Code of Criminal Procedure defines misdemeanor as “a violation of a penal law of this state that is not a felony, or a violation of an order, rule, or regulation of a state agency that is punishable by imprisonment or a fine that is not a civil fine.” MCL 761.1(h).

This chapter includes many of the misdemeanor traffic offenses in the Motor Vehicle Code that occur most frequently. For ease of reference, these offenses have been grouped into the following categories:

- Failing to Report or Leaving the Scene of Accidents — Part B.
- License and Permit Violations — Part C.
- Title, Plate, Registration, and Insurance Violations — Part D.
- Other Misdemeanors in the Motor Vehicle Code — Part E.

This chapter *does not* include:

- Civil infractions in the Motor Vehicle Code. For a discussion of civil infractions, see Chapters 1 and 2 of this volume of the *Traffic Benchbook*.
- Misdemeanors and civil infractions regulating the operation of off-road vehicles, snowmobiles, marine vessels, and personal watercrafts. For a discussion of these offenses, see Chapters 4–6 of Volume 2 of the *Traffic Benchbook*.
- Offenses involving drunk driving under MCL 257.625 and driving with a suspended/revoked license under MCL 257.904. All of these offenses (both felony and misdemeanor) are discussed in Chapters 1–5 of Volume 3 of the *Traffic Benchbook*.
- Traffic-related misdemeanor offenses found in other Michigan statutes, such as the Insurance Code, the Liquor Control Code, the Motor Carrier Safety Act, the Motor Carrier Act, or the Penal Code. These offenses are not included in any chapters of the *Traffic Benchbook*.

For easy reference, the discussion of each misdemeanor offense in this chapter includes:

- The name;
- The actual statute, or significant parts thereof;
- The elements of the crime;
- Criminal penalties;
- Secretary of State licensing sanctions; and,

- Issues of importance regarding that offense.

3.2 Courts With Jurisdiction Over Misdemeanor Traffic Offenses

The following courts have jurisdiction over misdemeanor traffic offenses:

- The district court has jurisdiction over misdemeanor offenses punishable by fine or imprisonment not exceeding one year, or both; and over ordinance and charter violations punishable by a fine or imprisonment, or both. MCL 600.8311(a)–(b).
- Any municipal court has jurisdiction over ordinance violations for all crimes, misdemeanors, and offenses committed within the limits of the city in which the court is located, punishable by a fine or imprisonment for not more than one year. MCL 730.551.
- The family division of circuit court has jurisdiction over all misdemeanor offenses committed by juveniles under age 17. MCL 712A.2(a)(1). See Miller, *Juvenile Traffic Benchbook—Revised Edition* (MJI, 2005), for a detailed treatment of the proceedings governing juvenile traffic actions.

3.3 Jurisdiction and Duties of District Court Magistrates

District court magistrates, when authorized by the chief judge, have the jurisdiction and duty to arraign and sentence upon pleas of guilty or nolo contendere for misdemeanor violations of the Motor Vehicle Code when the maximum penalty does not exceed 93 days. MCL 600.8511(b). This jurisdiction, however, does not include authority to take pleas and sentence defendants convicted of a violation of MCL 257.625, MCL 257.625m, or a substantially corresponding local ordinance. For these drunk driving offenses, the magistrate has limited jurisdiction to arraign the defendant and set bond. MCL 600.8511(b).

3.4 Processing of Misdemeanor Traffic Offenses

Adjudication of misdemeanor violations follows rules of criminal procedure, which in turn are controlled by the fundamental due process rights provided by the U.S. and Michigan Constitutions. Procedural safeguards include the right to a jury trial, the right to counsel, proof beyond a reasonable doubt, and adherence to the rules of evidence. The question to be resolved by the court is whether the prosecution has proven guilt beyond a reasonable doubt. See, generally, MCR 6.610 and 6.615, and Hummel, *Criminal Procedure Monograph 3: Misdemeanor Arraignments and Pleas—Revised Edition* (MJI, 2004).

The defendant driver who is charged with a misdemeanor pleads “guilty,” “not guilty,” or “nolo contendere.” A conviction is reported on the defendant’s criminal record. It is also reported to the Secretary of State and appears on the defendant’s “master driving record.”

3.5 Criminal Penalties for Misdemeanor Traffic Offenses

Under the Motor Vehicle Code, “[u]nless another penalty is provided in this act or by the laws of this state, a person convicted of a misdemeanor for the violation of this act shall be punished by a fine of not more than \$100.00, or by imprisonment for not more than 90 days, or both.” MCL 257.901(2).

A moving violation committed in a work zone, at an emergency scene, or in a school zone may result in “a fine that is double the fines otherwise prescribed for that moving violation.” MCL 257.601b(1).*

MCL 257.204b(1)-(2) provides that attempted violations of the Motor Vehicle Code shall be treated as completed offenses for purposes of imposing licensing sanctions and criminal penalties:

“(1) When assessing points, taking licensing or registration actions, or imposing other sanctions under this act for a conviction of an attempted violation of a law of this state, a local ordinance substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state, the secretary of state or the court shall treat the conviction the same as if it were a conviction for the completed offense.

“(2) The court shall impose a criminal penalty for a conviction of an attempted violation of this act or a local ordinance substantially corresponding to a provision of this act in the same manner as if the offense had been completed.”

For more information about attempted offenses under this provision, see Volume 3 of the *Traffic Benchbook*, Section 7.1.

3.6 Minimum State Costs for Misdemeanor Traffic Offenses

Effective October 1, 2003, a schedule of minimum state costs was established* for all misdemeanor convictions, including traffic convictions. MCL 600.8381(4) states:

“Beginning October 1, 2003, when fines and costs are assessed by a judge or district court magistrate, the defendant shall be ordered to pay costs of not less than \$45.00 for each conviction for a serious misdemeanor or a specified misdemeanor or costs of not

*See Section 1.20(A)(1) of this volume for further discussion.

*See 2003 PA 96.

less than \$40.00 for each conviction for any other misdemeanor or ordinance violation.”

Payment of the minimum state cost must be a condition of probation. MCL 771.3(1)(g).

*See Section 3.15, below.

“**Serious misdemeanors**” are listed in MCL 780.811(1)(a)(ix). The only “serious misdemeanor” discussed in this chapter is leaving the scene of a personal-injury accident, MCL 257.617a.* The definition of “serious misdemeanor” includes a violation of a local ordinance substantially corresponding to a “serious misdemeanor” and a charged felony or “serious misdemeanor” subsequently reduced or pled to as a misdemeanor. MCL 780.811(1)(a)(xiv) and (xv).

*See Section 3.49, below.

“**Specified misdemeanors**” are misdemeanor violations of statutory provisions listed in MCL 780.901(h). The only “specified misdemeanor” discussed in this chapter is reckless driving, MCL 257.626.* The definition of “specified misdemeanor” includes a violation of a local ordinance substantially corresponding to the violation listed above. MCL 780.901(h)(x).

3.7 Abstracts of Convictions

*Beginning October 1, 2005, abstracts must be forwarded within five days.

Within 14 days* after conviction, forfeiture of bail, or entry of a default judgment, the court shall prepare and immediately forward to the Secretary of State an abstract of the court record. MCL 257.732(1)(a). The abstract shall be certified by signature, stamp, or facsimile signature to be true and correct. MCL 257.732(3).

MCL 257.732(2) states:

“If a city or village department, bureau, or person is authorized to accept a payment of money as a settlement for a violation of a local ordinance substantially corresponding to this act, the city or village department, bureau, or person shall send a full report of each case in which a person pays any amount of money to the city or village department, bureau, or person to the secretary of state upon a form prescribed by the secretary of state.”

Under MCL 257.732(16)(b)–(d), abstracts of convictions are not required for:

*MCL 257.201 et seq. governs administration, registration, and certificate of title.

- Violations of Chapter 2* of the Motor Vehicle Code that are not the basis for the Secretary of State’s suspension, revocation, or denial of a person’s operator’s or chauffeur’s license; or
- Non-moving violations that are not the basis for the Secretary of State’s suspension, revocation, or denial of a person’s operator’s or chauffeur’s license.
- Passenger violations, other than a violation of MCL 436.1703(1) or (2) (minor in possession), MCL 257.624a or 257.624b

(transporting or possessing open alcohol), or a local ordinance substantially corresponding to one of these violations.

MCL 257.732(3)(a)–(i) requires that the abstract be contained in a form provided by the Secretary of State and include all of the following:

“(a) The name, address, and date of birth of the person charged or cited.

“(b) The number of the person’s operator’s or chauffeur’s license, if any.

“(c) The date and nature of the violation.

“(d) The type of vehicle driven at the time of the violation and, if the vehicle is a commercial motor vehicle, that vehicle’s group designation and indorsement classification.

“(e) The date of the conviction, finding, forfeiture, judgment, or civil infraction determination.

“(f) Whether bail was forfeited.

“(g) Any license restriction, suspension, or denial ordered by the court as provided by law.

“(h) The vehicle identification number and registration plate number of all vehicles that are ordered immobilized or forfeited.

“(i) Other information considered necessary to the secretary of state.”

3.8 Points

The misdemeanor conviction is entered on defendant’s “master driving record”; points may also be assessed according to the schedule prescribed by statute. Assessing points is a mandatory function of the Secretary of State; it is not a function of the court. MCL 257.320a(1) lists the points that shall be entered by the Secretary of State for the different types of offenses. Each section in this chapter provides the number of points assessed for each misdemeanor.

MCL 257.320a(5) states:

“If more than 1 conviction . . . results from the same incident, points shall be entered only for the violation that receives the highest number of points under this section.”

3.9 Driver's Responsibility Fees

The Secretary of State must impose a driver's responsibility fee upon individuals who have accumulated points under MCL 257.320a. MCL 257.732a(1) provides:

"An individual, whether licensed or not, who accumulates 7 or more points on his or her driving record pursuant to sections 320a . . . within a 2-year period for any violation not listed under subsection (2) shall be assessed a \$100.00 driver responsibility fee. For each additional point accumulated above 7 points not listed under subsection (2), an additional fee of \$50.00 shall be assessed. The secretary of state shall collect the fees described in this subsection once each year that the point total on an individual driving record is 7 points or more."

MCL 257.732a(2) specifies higher driver's responsibility fees for certain offenses. Those fees are discussed in this chapter in conjunction with the offenses to which they apply. MCL 257.732a states:

"(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction . . . for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state."

Only points assigned after the original effective date of the statute (October 1, 2003) will be used to calculate the driver responsibility fee. Points existing on a driver's record prior to that date do not count. MCL 257.732a(6).

Failure to pay a driver responsibility fee within the time prescribed will result in license suspension. MCL 257.732a(3), (5).

3.10 License Suspensions and Revocations

The Motor Vehicle Code provides that the Secretary of State shall immediately suspend a person's license upon receiving a record of a person's conviction for certain enumerated offenses. MCL 257.319 lists the lengths of those suspensions. License suspension is discussed in this chapter in conjunction with the offenses to which it applies.

If the Secretary of State receives records of more than one conviction of a person resulting from the same incident, a suspension shall be imposed only for the violation to which the longest period of suspension applies under this section. MCL 257.319(13).

The Motor Vehicle Code also provides for license revocation upon conviction of certain offenses or conviction of multiple offenses within specified time

periods. See MCL 257.303. License revocation is discussed in this chapter in conjunction with the offenses to which it applies.

The Secretary of State may suspend or revoke the license of a resident of this state upon receiving notice of the conviction or determination of responsibility of that person in an administrative adjudication in another state for a violation in that state which, if committed in this state, would be grounds for the suspension or revocation of the license. MCL 257.318.

The Secretary of State may suspend or revoke the right of a nonresident to operate a motor vehicle in this state for the same reasons the license of a resident driver may be suspended or revoked. MCL 257.317.

Part B—Failing to Report or Leaving the Scene of Accidents

3.11 Failing to Give Information and Aid at the Scene of an Accident

A. Statute

MCL 257.619* states:

“The driver of a vehicle who knows or who has reason to believe that he or she has been involved in an accident with an individual or with another vehicle that is operated or attended by another individual shall do all of the following:

“(a) Give his or her name and address, and the registration number of the vehicle he or she is operating, including the name and address of the owner, to a police officer, the individual struck, or the driver or occupants of the vehicle with which he or she has collided.

“(b) Exhibit his or her operator’s or chauffeur’s license to a police officer, individual struck, or the driver or occupants of the vehicle with which he or she has collided.

“(c) Render to any individual injured in the accident reasonable assistance in securing medical aid or arrange for or provide transportation to any injured individual.”

B. Elements of the Offense

- 1) Defendant driver knew or had reason to believe that he or she was involved in an accident with an individual or with another vehicle occupied or attended by another individual; and

*Amended by
2005 PA 3,
effective April
1, 2005.

- 2) Defendant driver failed to provide or exhibit to a police officer, the individual struck, or the driver or occupants of the vehicle with which the defendant driver collided the following information required by the statute:
 - a) Defendant driver's name and address, the registration number of his or her vehicle, including the name and address of the vehicle's owner, and
 - b) Defendant driver's operator's or chauffeur's license; or
- 3) Defendant driver failed to provide reasonable assistance to secure medical aid or transportation for an injured individual.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

Under MCL 257.320a(1)(d), six points are assessed on the driver's record when a driver is convicted of "[f]ailing to stop and disclose identity at the scene of an accident when required by law." However, the Secretary of State considers a violation of MCL 257.619 a non-moving violation and, therefore, does not assess any points for its violation. A conviction is not reported to the Secretary of State. MCL 257.732(16)(b).

E. Issues

*MCL 257.617 prohibits leaving the scene of an accident resulting in serious impairment of a body function or death. See Volume 3, Section 7.9 for a discussion of that statute.

The legislative intent behind MCL 257.617* and MCL 257.619 was to reduce hit-and-run accidents and encourage drivers involved in accidents to assume responsibility for identifying themselves and offering assistance, thus promoting public safety. *People v Sartor*, 235 Mich App 614, 620 (1999).

Where the term "accident" appears in criminal statutes that forbid leaving the scene of an accident, it includes accidents that were caused by intentional and unintentional conduct; the cause of the accident is not a concern. *People v Martinson*, 161 Mich App 55, 57 (1987).

In *People v Lang*, 250 Mich App 565, 573 (2002), the Court of Appeals held that MCL 257.617 requires the prosecutor to prove that the driver (1) knew or had reason to believe that he or she was involved in an accident and (2) knew or had reason to believe that the accident resulted in serious or aggravated injury to or the death of a person. In response to the *Lang* decision, the

Legislature amended MCL 257.617, 257.617a, 257.618, and 257.619, deleting the requirement that a driver know or have reason to believe that an accident resulted in physical injury, death, or property damage. 2005 PA 3.

In *People v Oliver*, 242 Mich App 92, 96–97 (2000), the Court of Appeals indicated that to be “involved in” an accident the defendant must have been “‘implicated,’ and ‘concerned in some affair, esp. in a way likely to cause danger or unpleasantness.’” In *Oliver*, the defendant used his car to push a broken car driven by his friend Alexander. Each time Alexander’s car slowed down the defendant would “bump” it to increase its speed. After one of the bumps, Alexander lost control of the vehicle, swerved into oncoming traffic, and was struck by an oncoming vehicle. The oncoming vehicle’s driver was killed. The defendant pulled his car over, looked back at the accident and then drove away. The defendant was convicted of failure to stop at a serious injury accident, MCL 257.617. On appeal, the defendant argued that he was not “involved in” the accident because his vehicle was not in contact with Alexander’s car when it swerved into oncoming traffic. The Court rejected the argument that “a vehicle cannot be ‘involved in’ an accident if it does not strike or physically touch another automobile.” *Id.* at 96.

In *People v Keskimaki*, 446 Mich 240 (1994), the Michigan Supreme Court provided that the determination of whether or not an accident has occurred depends on an examination of all of the circumstances surrounding the incident. Although the court declined to give a general definition of “accident” applicable to all criminal statutes, the Court indicated that consideration should be given to whether there has been a collision, whether personal injury or property damage has resulted from the occurrence, and whether the incident either was undesirable for or unexpected by any of the parties directly involved. *Id.* at 248-249.

MCL 257.617 does not limit accidents to multi-vehicle accidents. The driver of a vehicle involved in a single-vehicle accident must comply with the requirements of MCL 257.619. *People v Noble*, 238 Mich App 647, 659 (1999).

A person, other than the driver, in the motor vehicle at the time of the accident may be properly charged with aiding and abetting in the commission of leaving the scene of an accident without rendering necessary assistance to an injured person. If the person is found guilty, he or she is subject to the same punishment as the principal. *People v Hoaglin*, 262 Mich 162, 172 (1933).

A defendant’s Fifth Amendment right against self-incrimination is not implicated by requiring the defendant to comply with a statutory mandate to stop and disclose neutral information at the scene of a serious accident. *People v Goodin*, 257 Mich App 425, 431 (2003). MCL 257.617 requires a driver who was involved in an accident resulting in serious injury to stop at the scene of the accident and fulfill the disclosure requirements of MCL 257.619. In *Goodin*, the defendant argued that he would have been forced to incriminate himself by admitting he was involved in the collision if he had complied with

the statutory scheme of stopping at the scene and disclosing information. *Goodin, supra* at 428.

The Court disagreed with the defendant and held that the disclosures required of drivers involved in serious accidents are neutral, have no criminal implications, and do not create a significant risk of self-incrimination. *Goodin, supra* at 431.

The requirement in MCL 257.619 that a person render “reasonable assistance” is not unconstitutionally vague. *People v Noble*, 238 Mich App 647, 653 (1999).

3.12 Failing to Report Accident Involving Death, Personal Injury, or Property Damage of \$1,000 or More

A. Statute

In part, MCL 257.622 states:

“The driver of a motor vehicle involved in an accident that injures or kills any person, or that damages property to an apparent extent totaling \$1,000.00 or more,* shall immediately report that accident at the nearest or most convenient police station, or to the nearest or most convenient police officer.”

B. Elements of the Offense

- 1) Defendant driver was involved in an accident resulting in personal injury or death; or
- 2) Defendant was involved in an accident resulting in property damage to an apparent extent of \$1,000.00 or more (not actual damage amount); and
- 3) Defendant failed to immediately report the accident to the police.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

*Effective January 1, 2004, 2003 PA 66 increased the minimum dollar amount of property damage required by MCL 257.622 from \$400.00 to \$1,000.00.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. A conviction is not reported to the Secretary of State. MCL 257.732(16)(b).

E. Issues

Where the term “accident” appears in criminal statutes that forbid leaving the scene of an accident, it includes accidents that were caused by intentional and unintentional conduct; the cause of the accident is not a concern. *People v Martinson*, 161 Mich App 55, 57 (1987).

In *People v Oliver*, 242 Mich App 92, 96–97 (2000), the Court of Appeals held that to be “involved in” an accident the defendant must have been “‘implicated,’ and ‘concerned in some affair, esp. in a way likely to cause danger or unpleasantness.’” In *Oliver*, the defendant used his car to push a broken car driven by his friend Alexander. Each time Alexander’s car slowed down the defendant would “bump” it to increase its speed. After one of the bumps, Alexander lost control of the vehicle, swerved into oncoming traffic, and was struck by an oncoming vehicle. The oncoming vehicle’s driver was killed. The defendant pulled his car over, looked back at the accident and then drove away. The defendant was convicted of failure to stop at a serious injury accident, MCL 257.617. On appeal, the defendant argued that he was not “involved in” the accident because his vehicle was not in contact with Alexander’s car when it swerved into oncoming traffic. The Court rejected the argument that “a vehicle cannot be ‘involved in’ an accident if it does not strike or physically touch another automobile.” *Id.* at 96.

In *People v Keskimaki*, 446 Mich 240 (1994), the Michigan Supreme Court provided that the determination of whether or not an accident has occurred depends on an examination of all of the circumstances surrounding the incident. Although the court declined to give a general definition of “accident” applicable to all criminal statutes, the Court indicated that consideration should be given to whether there has been a collision, whether personal injury or property damage has resulted from the occurrence, and whether the incident either was undesirable for or unexpected by any of the parties directly involved. *Id.* at 248-249.

In a prosecution under MCL 257.622, the prosecuting attorney must introduce some evidence of the *actual* value of the property damage resulting from an accident, and the prosecuting attorney must prove that the extent of the damage was apparent. *People v Schmidt*, 196 Mich App 104, 107–108 (1992).

3.13 Garage or Repair Shop Failing to Report Evidence of Accident or Bullet

A. Statute

MCL 257.623 states:

“The person in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been involved in an accident or having been struck by any bullet shall report the same to the nearest police station or sheriff’s office immediately after such motor vehicle is received, giving the engine number, registration number and the name and address of the owner, and/or operator of such vehicle.”

B. Elements of the Offense

- 1) Defendant was in charge of a garage or repair shop;
- 2) A motor vehicle was brought that showed evidence of involvement in an accident or having been hit by a bullet; and
- 3) Defendant failed to immediately report evidence of an accident or bullet to the police, including engine number, registration number, and name and address of vehicle owner or operator.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. A conviction is not reported to the Secretary of State. MCL 257.732(16)(b).

3.14 Leaving the Scene of an Accident Resulting in Damage to Fixtures That Are Upon or Adjacent to a Highway

A. Statute

MCL 257.621(a) states:

“The driver of any vehicle involved in an accident resulting only in damage to fixtures legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such accident and of his [or her] name and address and of the registration number of the vehicle he [or she] is driving and shall upon request exhibit his [or her] operator’s or chauffeur’s license and, if such owner cannot be found, shall forthwith report such accident to the nearest or most convenient police officer.”

B. Elements of the Offense

- 1) Defendant driver was involved in an accident resulting only in damage to fixtures;
- 2) The fixtures were located legally on or adjacent to a highway; and
- 3) Defendant failed to take reasonable steps to locate and give notice to the owner or person in charge of the fixtures, or
- 4) Defendant could not find the owner or person in charge of the fixtures and failed to report the accident to a police officer.

The following information must be given:

- The driver’s name and address.
- The vehicle registration number.
- The defendant’s driver’s license, if requested.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. A conviction is not reported to the Secretary of State. MCL 257.732(16)(b).

The lack of points for this offense may appear inconsistent with similar misdemeanor offenses that require assessment of six points. See, for example, leaving the scene of an accident with an attended or unattended vehicle under MCL 257.620, which is discussed at Section 3.17, below.

*See MCL
257.320a(1)(d).

A 1977 attorney general opinion explains this disparity by pointing out that the Secretary of State assesses six points on a driver's record when he or she fails to "stop and disclose [his or her] identity at the scene of an accident when required by law."* The attorney general opinion concludes:

"[MCL 257.621] requires a driver to 'take reasonable steps to locate and notify the owner' of property damaged in the accident. Unlike [§620], this section includes no requirement that these steps be taken 'immediately' or 'then and there'. Such 'reasonable steps' . . . may very well involve leaving the scene of an accident as soon as possible where it is obvious that there is no one in the vicinity who could be the 'owner or person in charge' of the damaged property, and to whom notice could be given. Therefore . . . the Secretary of State should not assess 6 points against a driver convicted of violating §621." OAG, 1977, No 5137, pp 2–3 (March 22, 1977).

E. Issues

Where the term "accident" appears in criminal statutes that forbid leaving the scene of an accident, it includes accidents that were caused by intentional and unintentional conduct; the cause of the accident is not a concern. *People v Martinson*, 161 Mich App 55, 57 (1987).

In *People v Oliver*, 242 Mich App 92, 96–97 (2000), the Court of Appeals held that to be "involved in" an accident the defendant must have been "implicated," and "concerned in some affair, esp. in a way likely to cause danger or unpleasantness." In *Oliver*, the defendant used his car to push a broken car driven by his friend Alexander. Each time Alexander's car slowed down the defendant would "bump" it to increase its speed. After one of the bumps, Alexander lost control of the vehicle, swerved into oncoming traffic, and was struck by an oncoming vehicle. The oncoming vehicle's driver was killed. The defendant pulled his car over, looked back at the accident and then drove away. The defendant was convicted of failure to stop at a serious injury accident, MCL 257.617. On appeal, the defendant argued that he was not "involved in" the accident because his vehicle was not in contact with Alexander's car when it swerved into oncoming traffic. The Court rejected the argument that "a vehicle cannot be 'involved in' an accident if it does not strike or physically touch another automobile." *Id.* at 96.

In *People v Keskimaki*, 446 Mich 240 (1994), the Michigan Supreme Court provided that the determination of whether or not an accident has occurred depends on an examination of all of the circumstances surrounding the incident. Although the court declined to give a general definition of “accident” applicable to all criminal statutes, the Court indicated that consideration should be given to whether there has been a collision, whether personal injury or property damage has resulted from the occurrence, and whether the incident either was undesirable for or unexpected by any of the parties directly involved. *Id.* at 248-249.

3.15 Leaving the Scene of an Accident Resulting in Personal Injury

A. Statutes

MCL 257.617a* states in part:

“(1) The driver of a vehicle who knows or who has reason to believe that he [or she] has been involved in an accident upon public or private property that is open to travel by the public shall immediately stop his or her vehicle at the scene of the accident and shall remain there until the requirements of section 619 are fulfilled or immediately report the accident to the nearest or most convenient police agency or officer to fulfill the requirements of section 619(a) and (b) if there is a reasonable and honest belief that remaining at the scene will result in further harm. The stop shall be made without obstructing traffic more than is necessary.”

*Amended by
2005 PA 3,
effective April
1, 2005.

MCL 257.619* states:

“The driver of a vehicle who knows or who has reason to believe that he or she has been involved in an accident with an individual or with another vehicle that is operated or attended by another individual shall do all of the following:

*Amended by
2005 PA 3,
effective April
1, 2005.

“(a) Give his or her name and address, and the registration number of the vehicle he or she is operating, including the name and address of the owner, to a police officer, the individual struck, or the driver or occupants of the vehicle with which he or she has collided.

“(b) Exhibit his or her operator’s or chauffeur’s license to a police officer, individual struck, or the driver or occupants of the vehicle with which he or she has collided.

“(c) Render to any individual injured in the accident reasonable assistance in securing medical aid or arrange for or provide transportation to any injured individual.”

B. Elements of the Offense

- 1) Defendant driver knew or had reason to believe that he or she was involved in an accident; and
- 2) The accident occurred on property open to public travel; and
- 3) The accident resulted in injury to any individual; and
- 4) Defendant driver failed to stop and remain at the scene of the accident long enough to fulfill the requirements of MCL 257.619; or
- 5) There existed a reasonable and honest belief that remaining at the scene would result in further harm, defendant driver failed to stop at the scene, and defendant driver failed to immediately report the accident to the nearest or most convenient police officer or agency to fulfill the requirements of MCL 257.619(a) and (b).

C. Criminal Penalties

MCL 257.617a(2) provides for:

- imprisonment for not more than one year; or
- fine of not more than \$1,000.00; or
- both.

D. Licensing Sanctions

Six points. MCL 257.320a(1)(d). The Secretary of State shall suspend the defendant's license for 90 days. MCL 257.319(3)(a). A conviction is reported to the Secretary of State.

The Secretary of State is required to impose a \$1,000.00 driver responsibility fee for failing to stop and disclose identity at the scene of an accident when required by law. MCL 257.732a(2)(a)(iv).^{*} The fee shall be assessed for two consecutive years. Failure to pay a driver responsibility fee within the time prescribed will result in license suspension. MCL 257.732a(3), (5).

^{*}The fee is assessed for convictions under a Michigan law or ordinance, or a substantially corresponding law of another state.

E. Issues

The legislative intent behind MCL 257.617* and MCL 257.619 was to reduce hit-and-run accidents and encourage drivers involved in accidents to assume responsibility for identifying themselves and offering assistance, thus promoting public safety. *People v Sartor*, 235 Mich App 614, 620 (1999).

The requirement in MCL 257.619 that a person render “reasonable assistance” is not unconstitutionally vague. *People v Noble*, 238 Mich App 647, 653 (1999).

Where the term “accident” appears in criminal statutes that forbid leaving the scene of an accident, it includes accidents that were caused by intentional and unintentional conduct; the cause of the accident is not a concern. *People v Martinson*, 161 Mich App 55, 57 (1987).

In *People v Lang*, 250 Mich App 565, 573 (2002), the Court of Appeals held that MCL 257.617 requires the prosecutor to prove that the driver (1) knew or had reason to believe that he or she was involved in an accident and (2) knew or had reason to believe that the accident resulted in serious or aggravated injury to or the death of a person. In response to the *Lang* decision, the Legislature amended MCL 257.617, 257.617a, 257.618, and 257.619, deleting the requirement that a driver know or have reason to believe that an accident resulted in physical injury, death, or property damage. 2005 PA 3.

In *People v Oliver*, 242 Mich App 92, 96–97 (2000), the Court of Appeals held that to be “involved in” an accident the defendant must have been “‘implicated,’ and ‘concerned in some affair, esp. in a way likely to cause danger or unpleasantness.’” In *Oliver*, the defendant used his car to push a broken car driven by his friend Alexander. Each time Alexander’s car slowed down the defendant would “bump” it to increase its speed. After one of the bumps, Alexander lost control of the vehicle, swerved into oncoming traffic, and was struck by an oncoming vehicle. The oncoming vehicle’s driver was killed. The defendant pulled his car over, looked back at the accident and then drove away. The defendant was convicted of failure to stop at a serious injury accident, MCL 257.617. On appeal, the defendant argued that he was not “involved in” the accident because his vehicle was not in contact with Alexander’s car when it swerved into oncoming traffic. The Court rejected the argument that “a vehicle cannot be ‘involved in’ an accident if it does not strike or physically touch another automobile.” *Id.* at 96.

In *People v Keskimaki*, 446 Mich 240 (1994), the Michigan Supreme Court provided that the determination of whether or not an accident has occurred depends on an examination of all of the circumstances surrounding the incident. Although the court declined to give a general definition of “accident” applicable to all criminal statutes, the Court indicated that consideration should be given to whether there has been a collision, whether personal injury or property damage has resulted from the occurrence, and

*MCL 257.617 prohibits leaving the scene of an accident resulting in serious impairment of a body function or death. See Volume 3, Section 7.9 for a discussion of that statute.

whether the incident either was undesirable for or unexpected by any of the parties directly involved. *Id.* at 248-249.

An intent to injure is not a necessary element of failing to stop and identify at the scene of a personal injury accident. *People v Strickland*, 79 Mich App 454, 456 (1977).

A person, other than the driver, in the motor vehicle at the time of the accident may be properly charged with aiding and abetting in the commission of leaving the scene of an accident without rendering necessary assistance to an injured person. And if the person is found guilty, he or she is subject to the same punishment as the principal. *People v Hoaglin*, 262 Mich 162, 169 (1933).

Double jeopardy was not violated by defendant's conviction of both assault with a deadly weapon and leaving the scene of a personal injury accident for using his car to pin the victim between his car and another car before driving away. The two constituted different crimes; they were not submitted to the jury as alternatives or relied on by defense counsel as such. *People v Martinson, supra*, 161 Mich App at 58.

Double jeopardy was not violated when defendant was charged with both felonious driving and leaving the scene of an accident resulting in personal injury, when defendant was speeding while pursuing another motor vehicle and struck an oncoming motorcycle. A non-negotiated plea of guilty on the one charge did not prevent trying the other. *People v Goans*, 59 Mich App 294, 295-296 (1975).

A defendant's Fifth Amendment right against self-incrimination is not implicated by requiring the defendant to comply with a statutory mandate to stop and disclose neutral information at the scene of a serious accident. *People v Goodin*, 257 Mich App 425, 431 (2003). The Court held that the disclosures required of drivers involved in serious accidents are neutral, have no criminal implications, and do not create a significant risk of self-incrimination. *Goodin, supra* at 431.

3.16 Leaving the Scene of an Accident Resulting in Vehicle Damage Only

A. Statutes

MCL 257.618* states:

“(1) The driver of a vehicle who knows or who has reason to believe that he [or she] has been involved in an accident upon public or private property that is open to travel by the public shall immediately stop his or her vehicle at the scene of the accident and shall remain there until the requirements of section 619 are

*Amended by 2005 PA 3, effective April 1, 2005.

fulfilled or immediately report the accident to the nearest or most convenient police agency or officer to fulfill the requirements of section 619(a) and (b) if there is a reasonable and honest belief that remaining at the scene will result in further harm. The stop shall be made without obstructing traffic more than is necessary.

“(2) If an individual violates the requirements of subsection (1) and the accident results in damage to a vehicle operated by or attended by any individual, the individual is guilty of a misdemeanor”

MCL 257.619* states:

“The driver of a vehicle who knows or who has reason to believe that he or she has been involved in an accident with an individual or with another vehicle that is operated or attended by another individual shall do all of the following:

“(a) Give his or her name and address, and the registration number of the vehicle he or she is operating, including the name and address of the owner, to a police officer, the individual struck, or the driver or occupants of the vehicle with which he or she has collided.

“(b) Exhibit his or her operator’s or chauffeur’s license to a police officer, individual struck, or the driver or occupants of the vehicle with which he or she has collided.

“(c) Render to any individual injured in the accident reasonable assistance in securing medical aid or arrange for or provide transportation to any injured individual.”

B. Elements of the Offense

- 1) Defendant driver knew or had reason to believe that he or she was involved in an accident; and
- 2) The accident occurred on property open to public travel; and
- 3) The accident resulted in damage to a vehicle operated or attended by any individual; and
- 4) Defendant driver failed to stop and remain at the scene of the accident long enough to fulfill the requirements of MCL 257.619; or
- 5) There existed a reasonable and honest belief that remaining at the scene would result in further harm, defendant driver did not stop at the scene, and defendant driver failed to immediately report the accident to the nearest or most convenient police officer or agency to fulfill the requirements of MCL 257.619(a) and (b).

*Amended by
2005 PA 3,
effective April
1, 2005.

B. Criminal Penalties

MCL 257.618(2) provides for the following penalties:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

C. Licensing Sanctions

Six points. MCL 257.320a(1)(d). A conviction is reported to the Secretary of State.

The Secretary of State is required to impose a \$1,000.00 driver responsibility fee for failing to stop and disclose identity at the scene of an accident when required by law. MCL 257.732a(2)(a)(iv).^{*} The fee shall be assessed for two consecutive years. Failure to pay a driver responsibility fee within the time prescribed will result in license suspension. MCL 257.732a(3), (5).

D. Issues

Although MCL 257.618 requires the defendant to comply with the requirements of MCL 257.619, the giving of aid to injured persons is obviously not necessary when the accident results in vehicle damage only. If the defendant did stop, but failed to give information, he or she would be guilty of failing to give information and aid at the scene of an accident under MCL 257.619. No points would be assessed. See Section 3.11, above.

Where the term “accident” appears in criminal statutes that forbid leaving the scene of an accident, it includes accidents that were caused by intentional and unintentional conduct; the cause of the accident is not a concern. *People v Martinson*, 161 Mich App 55, 57 (1987).

In *People v Lang*, 250 Mich App 565, 573 (2002), the Court of Appeals held that MCL 257.617 requires the prosecutor to prove that the driver (1) knew or had reason to believe that he or she was involved in an accident and (2) knew or had reason to believe that the accident resulted in serious or aggravated injury to or the death of a person. In response to the *Lang* decision, the Legislature amended MCL 257.617, 257.617a, 257.618, and 257.619, deleting the requirement that a driver know or have reason to believe that an accident resulted in physical injury, death, or property damage. 2005 PA 3.

In *People v Oliver*, 242 Mich App 92, 96–97 (2000), the Court of Appeals held that to be “involved in” an accident the defendant must have been “‘implicated,’ and ‘concerned in some affair, esp. in a way likely to cause danger or unpleasantness.’” In *Oliver*, the defendant used his car to push a broken car driven by his friend Alexander. Each time Alexander’s car slowed

^{*}The fee is assessed for convictions under a Michigan law or ordinance, or a substantially corresponding law of another state.

down the defendant would “bump” it to increase its speed. After one of the bumps, Alexander lost control of the vehicle, swerved into oncoming traffic, and was struck by an oncoming vehicle. The oncoming vehicle’s driver was killed. The defendant pulled his car over, looked back at the accident and then drove away. The defendant was convicted of failure to stop at a serious injury accident, MCL 257.617. On appeal, the defendant argued that he was not “involved in” the accident because his vehicle was not in contact with Alexander’s car when it swerved into oncoming traffic. The Court rejected the argument that “a vehicle cannot be ‘involved in’ an accident if it does not strike or physically touch another automobile.” *Id.* at 96.

3.17 Leaving the Scene of an Accident With an Attended or Unattended Vehicle

A. Statute

MCL 257.620 states:

“The driver of any vehicle which collides upon either public or private property with any vehicle which is attended or unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the vehicle or, if such owner [of the other vehicle] cannot be located, shall forthwith report it to the nearest or most convenient police officer.”

B. Elements of the Offense

- 1) Defendant driver struck another vehicle, attended or unattended;
- 2) The accident occurred on either public or private property; and
- 3) Defendant failed to immediately stop and locate the driver or owner of the other vehicle and give defendant’s name and address and the name and address of the owner of the vehicle defendant was driving, or
- 4) Defendant did stop, but could not locate the owner of the other vehicle, and failed to report the accident to the nearest or most convenient police officer.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or

- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

Six points. MCL 257.320a(1)(d). A conviction is reported to the Secretary of State.

The assessment of six points for this offense may appear inconsistent with similar misdemeanor offenses that do not require assessment of any points. See, for example, leaving the scene of an accident resulting in damage to fixtures upon a highway, discussed at Section 3.14, above.

*See MCL
257.320a(1)(d).

A 1977 attorney general opinion explains this disparity by pointing out that the Secretary of State assesses six points on a driver's record when he or she fails to "stop and disclose [his or her] identity at the scene of an accident when required by law."* The attorney general opinion concludes:

"[Under MCL 257.620,] a driver involved in a collision with an attended or unattended vehicle must [immediately] stop and identify himself or herself. Only if he [or she] is unable to locate the operator or owner of the vehicle is he [or she] permitted to pursue the alternative of reporting the accident to a police officer. Therefore, if a driver is convicted of violating this section, he [or she] is convicted of failing to identify himself [or herself] at the scene of an accident." OAG, 1977, No 5137, pp 2–3, (March 22, 1977).

*The fee is assessed for convictions under a Michigan law or ordinance, or a substantially corresponding law of another state.

The Secretary of State is required to impose a \$1,000.00 driver responsibility fee for failing to stop and disclose identity at the scene of an accident when required by law. MCL 257.732a(2)(a)(iv).* The fee shall be assessed for two consecutive years. Failure to pay a driver responsibility fee within the time prescribed will result in license suspension. MCL 257.732a(3), (5).

Part C — License and Permit Violations

3.18 Allowing Another to Operate in Violation of the Motor Vehicle Code

A. Statute

MCL 257.326 states:

“No person shall knowingly authorize or permit a motor vehicle owned by him [or her] or under his [or her] control to be driven by any person in violation of any of the provisions of this act.”

B. Elements of the Offense

- 1) Defendant’s motor vehicle was driven by another in violation of the Motor Vehicle Code; and
- 2) Defendant knowingly authorized or permitted another to drive in violation of the Motor Vehicle Code.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. A conviction is not reported to the Secretary of State. MCL 257.732(16)(b).

3.19 Causing or Permitting an Unlicensed Minor to Drive

A. Statute

MCL 257.325 states:

“It shall be unlawful for any person to cause or knowingly permit any minor to drive a motor vehicle upon a highway as an operator,

unless the minor has first obtained a license to drive a motor vehicle under the provisions of this chapter.”

B. Elements of the Offense

- 1) A minor drove a motor vehicle on a highway;
- 2) At that time, the minor was not licensed to drive; and
- 3) Defendant caused or knowingly permitted the unlicensed minor to drive.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. A conviction is not reported to the Secretary of State. MCL 257.732(16)(b).

3.20 Driving in Violation of a Restricted License

A. Statute

MCL 257.312(1) states:

“Upon proper showing of extenuating circumstances and special reasons, or need by an applicant who meets the age qualifications and when accompanied by the fee as provided in this act, the secretary of state may recommend a restricted operator’s or chauffeur’s license containing conditions and restrictions applicable to the licensee, the type of special mechanical control devices required in a motor vehicle operated by the licensee, and the area, time, or other condition that the secretary of state considers necessary to assure the safe operation of a vehicle by the licensee and under which the licensee may operate a motor vehicle. A license issued to a person who is at least 14 years of age and under 16 years of age shall contain only the conditions determining the hours during which the licensee may drive a motor vehicle and the purpose for which it is to be driven. A license

issued to a minor who is at least 14 years of age and under 16 years of age shall be revoked by the secretary of state on the written request of a parent, guardian, or person standing in loco parentis.”

MCL 257.312(4)–(5) state:

“(4) A person who violates a restriction imposed in a restricted license issued to that person is guilty of a misdemeanor. This subsection shall not apply to a person who is at least 14 years of age and under 16 years of age.

“(5) If a motor vehicle is being driven by a person who is at least 14 years of age and under 16 years of age, and that person is accompanied by a parent, guardian, or person standing in loco parentis, the conditions, limitations, and restrictions set forth in this section do not apply.”

B. Elements of the Offense

- 1) Defendant’s license was issued to him or her with restrictions or conditions necessary for the safe operation of a motor vehicle; and
- 2) Defendant drove in violation of a restriction or condition.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

Two points. MCL 257.320a(1)(s). The Secretary of State has interpreted “[a]ll other moving violations” to include this offense. A conviction is reported to the Secretary of State.

MCL 257.312(3) states:

“Upon receiving satisfactory evidence of a violation of the restrictions of the license, the secretary of state may suspend or revoke the license.”

3.21 Driving With an Invalid License

A. Statutes:

MCL 257.301 states:

“(1) Except as provided in this act, a person shall not drive a motor vehicle upon a highway in this state unless that person has a valid operator’s or chauffeur’s license with the appropriate group designation and endorsements for the type or class of vehicle being driven or towed.

“(2) A person shall not receive a license to operate a motor vehicle until that person surrenders to the secretary of state all valid licenses to operate a motor vehicle issued to that person by this or any state or certifies that he or she does not possess a valid license. The secretary of state shall notify the issuing state that the licensee is now licensed in this state.

“(3) A person shall not have more than 1 valid driver’s license.

“(4) A person shall not drive a motor vehicle as a chauffeur unless that person holds a valid chauffeur’s license. A person shall not receive a chauffeur’s license until that person surrenders to the secretary of state a valid operator’s or chauffeur’s license issued to that person by this or any state or certifies that he or she does not possess a valid license.

“(5) A person holding a valid chauffeur’s license need not procure an operator’s license.”

B. Elements of the Offense

- 1) Defendant drove a motor vehicle on a highway; and
- 2) At that time, defendant did not have a valid license.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

Two points. MCL 257.320a(1)(s). The Secretary of State has interpreted “[a]ll other moving violations” to include this offense. A conviction is reported to the Secretary of State.

The Secretary of State is required to impose a \$150.00 driver responsibility fee for a conviction of MCL 257.301. MCL 257.732a(2)(c). * The fee shall be assessed for two consecutive years. Failure to pay a driver responsibility fee within the time prescribed will result in license suspension. MCL 257.732a(3), (5).

*The fee is assessed for convictions under a Michigan law or ordinance, or a substantially corresponding law of another state.

3.22 Driving Without a License

A. Statute

MCL 257.904a states:

“Any person, not exempt from license under this act, who shall operate a motor vehicle upon the highways of this state and who is unable to show that he or she has been issued a license to operate a motor vehicle by any state or foreign country valid within the 3 years preceding is guilty of a misdemeanor, and upon conviction shall be punished by imprisonment for not more than 90 days, or by a fine of not less than \$50.00 nor more than \$100.00, or both. Any person convicted of a second offense under this section shall be punished by imprisonment for not less than 2 nor more than 90 days, or by a fine of \$100.00, or both.”

B. Elements of the Offense

- 1) Defendant operated a motor vehicle on the highways of this state;
- 2) At that time, defendant was unable to show that he or she had been issued a license to operate a motor vehicle by any state or foreign country valid within the past three years; and
- 3) Defendant was not exempt from the required license under this act.*

*See MCL 257.302 for a list of persons exempt from licensing requirements.

C. Criminal Penalties

MCL 257.904a provides the following penalties:

1. First Offense:

- imprisonment for not more than 90 days; or

- fine of \$50.00 to \$100.00; or
- both.

2. Second Offense:

- imprisonment for not less than two days or more than 90 days; or
- fine of \$100.00; or
- both.

D. Licensing Sanctions

Two points. MCL 257.320a(1)(s). The Secretary of State has interpreted “[a]ll other moving violations” to include this offense. A conviction is reported to the Secretary of State.

3.23 Driving Without a License in Possession

A. Statute

MCL 257.311 states:

“The licensee shall have his or her operator’s or chauffeur’s license, or the receipt described in section 311a, in his or her immediate possession at all times when operating a motor vehicle, and shall display the same upon demand of any police officer, who shall identify himself or herself as such.”

B. Elements of the Offense

- 1) Defendant, a licensed driver, operated a motor vehicle; and
- 2) At that time, defendant did not have his or her license in immediate possession; or
- 3) Defendant failed to display his or her license on demand of an identified police officer.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or

- both.

However, if the defendant did not have his or her license in immediate possession, the court shall waive the fine and costs on receipt of certification by a law enforcement agency that the defendant, before the appearance date on the citation, has produced his or her license and that the license was valid on the date the violation occurred. MCL 257.901a.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. See MCL 257.320a(2) (no points assigned). A conviction is reported to the Secretary of State.

E. Issues

A person is charged with this offense when they have driving privileges and a valid license, but they do not have the license in immediate possession at the time of the violation.

The receipt described in MCL 257.311a is issued by the court to a person who is accused of a misdemeanor or ordinance violation, and who is required to surrender his or her license as a condition of bail. The receipt has the same effect as the license in granting driving privileges, but that effect expires either on the date specified on the receipt by the court or on the date on which the license expires, whichever date occurs first.

A police officer does not need to orally identify himself or herself to meet the requirements of MCL 257.311. In *People v McKinley*, 255 Mich App 20, 29 (2003) the Court stated,

“The term ‘identify’ is not defined in the statute or the vehicle code, thus, we consult the *Random House Webster’s College Dictionary* (2001), to construe the term ‘identify’ to mean ‘to recognize or established as being a particular person or thing.’”

The Court held that where an officer was in a fully marked police vehicle with its emergency lights activated and approached a defendant while in full uniform, the requirement of MCL 257.311 to identify himself as a police officer was met. *McKinley*, *supra* at 29–30.

3.24 Reporting a False Address Change to the Secretary of State

A. Statute

MCL 257.315(4)–(5) state:

“(4) A person shall not knowingly report a change of address to the secretary of state for himself or herself that is not his or her residence address. A person shall not knowingly report a change of address to the secretary of state for another person without the consent of the other person. A person who is convicted of a violation of this subsection is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of \$1,000.00, or both. . . .

“(5) Upon a second or subsequent conviction under subsection (4), a person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of \$5,000.00, or both. . . .”

B. Elements of the Offense

- 1) Defendant reported a change of address to the Secretary of State that was not his or her residence address; or
- 2) Defendant reported a change of address to the Secretary of State for another person without the consent of the other person.

C. Criminal Penalties

1. First Offense

MCL 257.315(4) provides the following penalties for a first offense:

- imprisonment for not more than 93 days; or
- fine of \$1,000.00; or
- both.

2. Second Offense

MCL 257.315(5) provides the following penalties for a second or subsequent offense:

- imprisonment for not more than 93 days; or
- fine of \$5,000.00; or
- both.

D. Licensing Sanctions

No points are assessed for this offense. A conviction is reported to the Secretary of State.

1. First Offense

Upon receiving an abstract of conviction for a first offense, the Secretary of State may suspend the person's license for six months. The Secretary of State shall not issue a restricted license during the period of this suspension. MCL 257.315(4).

2. Second Offense

Upon receiving an abstract of conviction for a second or subsequent offense, the Secretary of State shall revoke the person's license. MCL 257.315(5).

E. Issues

1999 PA 118, effective April 1, 2000, decriminalized the offense of failing to change a person's address on his or her driver's license. MCL 257.315(1) and (3). See Section 2.22 of this volume for a summary of that offense.

"Under the Michigan Vehicle Code, the defendant has a duty to show a correct address on his [or her] operator's license. This duty exists even though the time may not have arrived when the license itself needs to be renewed." *Hamilton v Gordon*, 135 Mich App 289, 294 (1984).

3.25 Reproducing, Altering, Counterfeiting, Forging, or Duplicating a License, or Using Such License, With Intent to Commit a Crime

A. Statute

MCL 257.310(7)(c) states:

"(7) A person who intentionally reproduces, alters, counterfeits, forges, or duplicates a license photograph, the negative of the photograph, an image, a license, or the electronic data contained on a license or a part of a license or who uses a license, an image, or photograph that has been reproduced, altered, counterfeited, forged, or duplicated is subject to 1 of the following:

* * *

"(c) If the intent of the reproduction, alteration, counterfeiting, forging, duplication, or use was to commit

or aid in the commission of an offense that is a misdemeanor punishable by imprisonment for less than 6 months, the person committing the reproduction, alteration, counterfeiting, forging, duplication, or use is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$2,000.00, or both.”

B. Elements of the Offense

- 1) Defendant reproduced, altered, counterfeited, forged, or duplicated a license photograph, the negative of a photograph, an image, a license, or the electronic data contained on the license or a part of a license; or
- 2) Defendant used a license, an image, or photograph that was reproduced, altered, counterfeited, forged, or duplicated; and
- 3) With such license, defendant intended to commit or aid in the commission of a crime punishable by less than six months’ imprisonment.

C. Criminal Penalties

MCL 257.310(7)(c) provides the following penalties:

- imprisonment for not more than one year; or
- fine of not more than \$2,000.00; or
- both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. A conviction is not reported to the Secretary of State. MCL 257.732(16)(b).

E. Issues

See Volume 3, Section 7.2 for discussion of the felony offense of reproducing, altering, forging, or duplicating a license.

3.26 Possession of a Reproduced, Altered, Counterfeit, Forged, or Duplicate License

A. Statute

MCL 257.310(10) states:

“Except as provided in subsection (16), a person who is in possession of a reproduced, altered, counterfeited, forged, or duplicated license photograph, negative of the photograph, image, license, or electronic data contained on a license or part of a license is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$2,000.00, or both.”

MCL 257.310(16) provides the following exception:

“Subsections (8), (9), and (10) do not apply to a person who is in possession of 1 or more photocopies, reproductions, or duplications of a license to document the identity of the licensee for a legitimate business purpose.”

B. Element of the Offense

Defendant possessed a reproduced, altered, counterfeited, forged, or duplicated license photograph, the negative of a photograph, an image, a license, or the electronic data contained on the license or a part of a license.

C. Criminal Penalties

MCL 257.310(10) provides the following penalties:

- imprisonment for not more than one year; or
- fine of not more than \$2,000.00; or
- both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. A conviction is not reported to the Secretary of State. MCL 257.732(16)(b).

3.27 Unlawful Use or Display of License

A. Statute

MCL 257.324(1)–(2) state:

“(1) A person shall not do any of the following:

“(a) Display, or cause or permit to be displayed, or have in possession an operator’s or chauffeur’s license knowing the operator’s or chauffeur’s license to be fictitious or to have been canceled, revoked, suspended, or altered.

“(b) Lend to or knowingly permit use of, by one not entitled to its use, the operator’s or chauffeur’s license issued to the person lending or permitting the use of the operator’s or chauffeur’s license.

“(c) Display or to represent as one’s own any operator’s or chauffeur’s license not issued to the person displaying the operator’s or chauffeur’s license.

“(d) Fail or refuse to surrender to the department upon demand, any operator’s or chauffeur’s license which has been suspended, canceled, or revoked as provided by law.

“(e) Use a false or fictitious name or give a false or fictitious address in an application for an operator’s or chauffeur’s license, or any renewal or duplicate of an operator’s or chauffeur’s license, or knowingly make a false statement or knowingly conceal a material fact or otherwise commit a fraud in making an application.

“(f) Alter or otherwise cause to be altered any operator’s or chauffeur’s license so as to knowingly make a false statement or knowingly conceal a material fact in order to misrepresent as one’s own the operator’s or chauffeur’s license.

“(g) Use or have in possession in committing a crime an operator’s or chauffeur’s license that has been altered or that is used to knowingly make a false statement or to knowingly conceal a material fact in order to misrepresent as one’s own the operator’s or chauffeur’s license.

“(h) Furnish to a peace officer false, forged, fictitious, or misleading verbal or written information identifying the person as another person, if the person is detained for a

violation of this act or of a local ordinance substantially corresponding to a provision of this act.

“(2) A license for an operator or chauffeur issued under this chapter upon an application that is untrue, or that contains false statements as to any material matters, is absolutely void from the date of issuance. The operator or chauffeur who was issued the license is considered unlicensed and the license issued shall be returned upon request or order of the department.”

B. Elements of the Offense

1. A person shall not do any of the following:

- a. Display or possess any license knowing it to be fictitious, canceled, revoked, suspended, or altered.
- b. Lend or knowingly permit another person to use one's license.
- c. Display or represent another person's license as one's own.
- d. Fail or refuse to surrender to the department on demand any license which has been suspended, canceled, or revoked.
- e. Use a false or fictitious name or address in an application for a license or for any renewal or duplicate, or knowingly make a false statement, or knowingly conceal a material fact or otherwise commit a fraud in making application.
- f. Alter any license so as to knowingly make a false statement, or knowingly conceal a material fact in order to misrepresent another person's license as one's own.
- g. In committing a crime, use or possess a license that has been altered or that is used to knowingly make a false statement, or to knowingly conceal a material fact in order to misrepresent another person's license as one's own.
- h. If detained for a violation of this act, furnish to a peace officer false, forged, fictitious, or misleading verbal or written information identifying oneself as another person.

2. Any license issued under an application that is untrue, or that contains false statements as to any material matters, shall be absolutely void from the date of issuance. The person who was issued the license shall be deemed unlicensed, and the license shall be taken on request or order of the Secretary of State.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

No points are assessed for this offense. A conviction is reported to the Secretary of State.

1. First Offense

For a violation of MCL 257.324(1), if the person has no prior conviction for perjury, false certification, or a violation of MCL 257.324(1), the Secretary of State shall suspend the person's license for 90 days. MCL 257.319(5)(a).

2. Second Offense Within Seven Years

For a violation of MCL 257.324(1), if the person has one or more prior convictions for perjury, false certification, or MCL 257.324(1), the Secretary of State shall suspend the person's license for one year. MCL 257.319(5)(b).

Part D—Title, Plate, Registration, and Insurance Violations

3.28 Failing to Apply for Registration and Certificate of Title

A. Statute

MCL 257.217(1) states:

“An owner of a vehicle that is subject to registration under this act shall apply to the secretary of state, upon an appropriate form furnished by the secretary of state, for the registration of the vehicle and issuance of a certificate of title for the vehicle The application shall be accompanied by the required fee. An application for a certificate of title shall bear the signature of the owner. . . .”

B. Elements of the Offense

1. Defendant owned a vehicle that was of a type required to be registered with the Secretary of State; and
2. Defendant failed to register the vehicle, failed to apply for certificate of title, or failed to pay the required fee.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

No points are assessed for this offense. A conviction is reported to the Secretary of State. For perjury or making a false certification to the Secretary of State, if the person has no prior conviction for perjury, false certification, or violation of MCL 257.324(1), the Secretary of State shall suspend the person's license for 90 days. MCL 257.319(5)(a). For perjury or making a false certification to the Secretary of State, if the person has one or more prior convictions for perjury, false certification, or a violation of MCL 257.324(1), the Secretary of State shall suspend the person's license for one year. MCL 257.319(5)(b).

E. Issues

The title transfer provisions of the Motor Vehicle Code must be complied with even in the case of an inoperable motor vehicle sold for junk or salvage purposes. *Holtzlander v Brownell*, 182 Mich App 716, 720 (1990).

3.29 Failing to Transfer Title

A. Statutes

MCL 257.234(1)–(3) state:

“(1) The purchaser or transferee, unless the person is a licensed dealer, shall present or cause to be presented the certificate of title and registration certificate if plates are being transferred to another vehicle, assigned as provided in this act, to the secretary of state

accompanied by the fees as provided by law, whereupon a new certificate of title and registration certificate shall be issued to the assignee. The certificate of title shall be mailed or delivered to the owner or another person the owner may direct in a separate instrument in a form the secretary of state shall prescribe.

“(2) If the secretary of state mails or delivers a purchaser’s or transferee’s certificate of title to a dealer, the dealer shall mail or deliver that certificate of title to the purchaser or transferee not more than 5 days after receiving the certificate of title from the secretary of state.

“(3) Unless the transfer is made and the fee paid within 15 days, the vehicle shall be considered to be without registration, the secretary of state may repossess the license plates, and transfer of the vehicle ownership may be effected and a valid registration acquired thereafter only upon payment of a transfer fee of \$15.00 in addition to the fee provided for in [MCL 257.806].”

MCL 257.806(1)–(3) state:

“(1) Until October 1, 2009, a fee of \$10.00 shall accompany each application for a certificate of title required by this act or for a duplicate of a certificate of title. An additional fee of \$5.00 shall accompany an application if the applicant requests that the application be given special expeditious treatment. A \$3.00 service fee shall be collected, in addition to the other fees collected under this subsection, for each title issued. The \$3.00 service fee shall be deposited into the transportation administration collection fund.

“(2) A fee of \$10.00 shall accompany an application for a special identifying number as provided in [MCL 257.230].*

“(3) In addition to paying the fees required by subsection (1), until December 31, 2007, each person who applies for a certificate of title, a salvage vehicle certificate of title, or a scrap certificate of title, under this act shall pay a tire disposal surcharge of \$1.50 for each certificate of title or duplicate of a certificate of title that person receives. The secretary of state shall deposit money received under this subsection into the scrap tire regulatory fund created in section 16908 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.16908.”

*MCL 257.230 provides for a special identifying number after an engine, serial, or vehicle number has been altered, removed, or defaced.

B. Elements of the Offense

- 1) Defendant was the purchaser or transferee of a motor vehicle required to be registered with the Secretary of State; and

- 2) Defendant failed to present the certificate of title and registration certificate if plates are being transferred to another vehicle to the Secretary of State with the appropriate fees within 15 days.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. A conviction is not reported to the Secretary of State. MCL 257.732(16)(c).

E. Issues

The title transfer provisions of the Motor Vehicle Code must be complied with even in the case of an inoperable motor vehicle sold for junk or salvage purposes. *Holtzlander v Brownell*, 182 Mich App 716, 720 (1990).

3.30 Forging Proof of Insurance

A. Statute

MCL 257.905 states:

“A person who forges, or without authority signs, any evidence of ability to respond in damages as required by the secretary of state . . . is guilty of a misdemeanor, punishable by a fine of not less than \$100.00 nor more than \$1,000.00, or imprisonment for not more than 90 days, or both. . . .”

B. Elements of the Offense

Defendant forged, or without authority signed, proof of insurance.

C. Criminal Penalties

MCL 257.905 provides for:

- imprisonment for not more than 90 days; or

- fine of not less than \$100.00 or more than \$1,000.00; or
- both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. A conviction is not reported to the Secretary of State. MCL 257.732(16)(b).

E. Issues

There are four different offenses in Michigan dealing with an owner's obligation to have no-fault automobile insurance. Because these offenses are often confused with one another, they are listed here in order of severity:

- No proof of insurance is a civil infraction under MCL 257.328(1). See Section 2.18 of this volume for this civil infraction.
- Forging proof of insurance is a 90-day misdemeanor under MCL 257.905.
- Producing false evidence of insurance is a one-year misdemeanor under MCL 257.328(5). See Section 3.32, below, for this offense.
- Operating a motor vehicle without insurance is a one-year misdemeanor under the Insurance Code, MCL 500.3102(2). This offense is not included in the *Traffic Benchbook*.

3.31 Operating an Unregistered Vehicle

A. Statute

MCL 257.215 states:

“It is a misdemeanor for any person to drive or move or for an owner knowingly to permit to be driven or moved upon any highway any vehicle of a type required to be registered hereunder which is not registered or for which a certificate of title has not been applied for or for which the appropriate fee has not been paid.
...”

Thirteen exceptions to the foregoing provision are found at MCL 257.216. One in particular states: “For 3 days immediately following the date of a properly assigned title or signed lease agreement from any person other than a vehicle dealer, a registration need not be obtained for a vehicle driven or moved upon the highway for the sole purpose of transporting the vehicle in the most direct route from the place of purchase or lease to a place of storage

if the driver has in his or her possession the assigned title showing the date of sale or lease agreement showing the date of the lease.” MCL 257.216(l).

B. Elements of the Offense

- 1) Defendant operated or knowingly permitted another person to operate a vehicle on the highway; or

Defendant moved or knowingly permitted another to move the vehicle on a highway;

- 2) The vehicle was of a type required to be registered with the Secretary of State; and
- 3) The vehicle was not registered, certificate of title was not applied for, or appropriate fees were not paid.

C. Criminal Penalties

MCL 257.901(2) provides the following penalties:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. A conviction is not reported to the Secretary of State. MCL 257.732(16)(c).

3.32 Producing False Evidence of Motor Vehicle Insurance

A. Statute

MCL 257.328(6) and (8) state:

“(6) An owner or operator of a motor vehicle who knowingly produces false evidence [of motor vehicle insurance] under this section is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of not more than \$1,000.00, or both.

“(8) This section does not apply to the owner or operator of a motor vehicle that is registered in a state other than this state or a foreign country or province.”

B. Elements of the Offense

- 1) Defendant owned a motor vehicle or operated a motor vehicle on a highway;
- 2) Defendant was asked to produce evidence of insurance for the motor vehicle he or she owned or operated; and
- 3) Defendant knowingly produced false evidence of motor vehicle insurance.

C. Criminal Penalties

MCL 257.328(6) provides for:

- imprisonment for not more than one year; or
- fine of not more than \$1,000.00; or
- both.

D. Licensing Sanctions

No points are assessed for this offense. MCL 257.328(7). A conviction is not reported to the Secretary of State. MCL 257.732(16)(b).

Subject to MCL 257.732a(8), when an abstract is posted that a person has been found guilty or determined responsible for a violation of MCL 257.328, the Secretary of State shall assess a \$200.00 driver responsibility fee each year for two consecutive years. MCL 257.732a(2)(d).*

E. Issues

There are four different offenses in Michigan dealing with an owner's obligation to have no-fault automobile insurance. Because these offenses are often confused with one another, they are listed here in order of severity:

- Failing to produce evidence of insurance is a civil infraction under MCL 257.328(1). See Section 2.18 of this volume for this civil infraction.
- Forging proof of insurance is a 90-day misdemeanor under MCL 257.905. See Section 3.30, above, for this offense.
- Producing false evidence of insurance is a one-year misdemeanor under MCL 257.328(5).

*The fee is assessed for convictions under a Michigan law or ordinance, or a substantially corresponding law of another state.

- Operating a motor vehicle without insurance is a one-year misdemeanor under the Insurance Code, MCL 500.3102(2). This offense is not included in this benchbook.

3.33 Reproducing, Altering, Counterfeiting, Forging, or Duplicating Certificate of Title, or Using Such Certificate of Title, With Intent to Commit a Crime

A. Statute

MCL 257.222(6)(a)–(b) state:

“(6) A person who intentionally reproduces, alters, counterfeits, forges, or duplicates a certificate of title or who uses a reproduced, altered, counterfeited, forged, or duplicated certificate of title shall be punished as follows:

“(a) If the intent of reproduction, alteration, counterfeiting, forging, duplication, or use was to commit or aid in the commission of an offense punishable by imprisonment for 1 or more years, the person committing the reproduction, alteration, counterfeiting, forging, duplication, or use is guilty of a misdemeanor, punishable by imprisonment for a period equal to that which could be imposed for the commission of the offense the person had the intent to aid or commit. The court may also assess a fine of not more than \$10,000.00 against the person.

“(b) If the intent of reproduction, alteration, counterfeiting, forging, duplication, or use was to commit or aid in the commission of an offense punishable by imprisonment for not more than 1 year, the person committing the reproduction, alteration, counterfeiting, forging, duplication, or use is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of not more than \$1,000.00, or both.”

B. Elements of the Offense

- 1) Defendant reproduced, altered, counterfeited, forged, or duplicated a certificate of title; or
- 2) Defendant used a reproduced, altered, counterfeited, forged, or duplicated certificate of title; and

- 3) With such certificate of title, defendant intended to commit or aid in the commission of a crime.

C. Criminal Penalties

MCL 257.222(6)(a) provides the following penalties, which depend upon the length of imprisonment for the intended crime:

- 1) If the intended crime is punishable by imprisonment for more than one year:
 - imprisonment for a period equal to that which could be imposed for the commission of the crime; and
 - fine of not more than \$10,000.00.
- 2) If the intended crime is punishable by imprisonment for not more than one year:
 - imprisonment for not more than one year; or
 - fine of not more than \$1,000.00; or
 - both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. A conviction is not reported to the Secretary of State. MCL 257.732(16)(c).

E. Issues

Even though MCL 257.222(6)(a) says the defendant shall be guilty of a misdemeanor, the penalty provision states that the period of imprisonment is equal to that which could be imposed for the crime the defendant intended to commit.

This criminal offense is distinguishable from false application for title, a felony, under MCL 257.254. Specific intent to fraudulently pass title is not an element of making false application for certificate of title; intent can be inferred from the other necessary elements. See Section 7.4 in Volume 3 of the *Traffic Benchbook—Third Edition*.

3.34 Temporary Registration Violations

A. Statute

MCL 257.226b(1)–(2) state:

“(1) A temporary registration may be issued to an owner of a vehicle. The registration shall be valid for either 30 days or 60 days from date of issue, at the discretion of the owner, and shall be in a form as determined by the secretary of state. A fee shall be collected for each temporary registration as provided in [MCL 257.802].

“(2) A vehicle which has a temporary registration shall not be used for the transportation of passengers for hire or for the transportation of goods, wares, or merchandise or draw other vehicles transporting goods, wares, or merchandise.”

B. Elements of the Offense

- 1) Defendant was issued a temporary registration for his or her vehicle; and
- 2) During the time that the temporary registration was valid, defendant transported passengers for hire; transported goods, wares, or merchandise; or drew other vehicles transporting goods, wares, or merchandise.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. A conviction is not reported to the Secretary of State. MCL 257.732(16)(c).

3.35 Unlawful Lending or Use of Title, Registration Certificate, Plate, or Permit

A. Statute

MCL 257.256(1) states:

“A person shall not lend to another person, or knowingly permit the use of, any certificate of title, registration certificate, registration plate, special plate, or permit issued to him or her if the

person receiving or using the certificate of title, registration certificate, registration plate, special plate, or permit would not be entitled to the use thereof. A person shall not carry or display upon a vehicle any registration certificate or registration plate not issued for the vehicle or not otherwise lawfully used under this act.”

B. Elements of the Offense

Both the lender and borrower are liable under this statute:

- 1) Defendant loaned to another person, or knowingly permitted another person to use, a title, registration certificate, plate, or permit that was issued to the defendant, and the other person was not otherwise entitled to its use.

or

- 2) The other person carried or displayed on a vehicle a registration certificate or plate not issued for that vehicle.

C. Criminal Penalties

MCL 257.256(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. A conviction is not reported to the Secretary of State. MCL 257.732(16)(c).

E. Issues

A defendant dealer was held to be in violation of MCL 257.256 when he allowed his employees, including the defendant driver, regular access to his automobile dealer plates for their personal use. *Wieland v Kenny*, 385 Mich 654, 658 (1971).

Defendant dealer loaned another its dealer license plate for the limited purpose of driving a newly purchased automobile to another location. There was no improper loan of the dealer plate or continued improper use of the plate with the dealer’s knowledge and consent as in *Wieland*, above. *McCroskey v Gene Deming Motor Sales, Inc*, 94 Mich App 309, 313–314 (1979).

Part E — Other Misdemeanors Found in the Motor Vehicle Code

3.36 Disobeying the Direction of a Police Officer Who Is Regulating Traffic

A. Statute

MCL 257.602 states:

“A person shall not refuse to comply with a lawful order or direction of a police officer when that officer, for public interest and safety, is guiding, directing, controlling, or regulating traffic on the highways of this state.”

B. Elements of the Offense

- 1) Defendant refused to comply with a lawful order or direction of a police officer; and
- 2) At that time, the police officer was guiding, directing, controlling, or regulating traffic for public interest and safety.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

Two points. MCL 257.320a(1)(s). The Secretary of State has interpreted “[a]ll other moving violations” to include this offense. A conviction is reported to the Secretary of State. However, there is no requirement that defendant must be operating a vehicle to commit this offense. For example, defendant could commit this offense if he or she was a pedestrian, a vendor, or a solicitor at the time that he or she disobeyed the police officer. See OAG, 1955, No 2098 (July 13, 1955). In such cases, this would not be considered a moving violation.

E. Issues

See Section 7.8 in Volume 3 of the *Traffic Benchbook* for summaries of the felony offense of fleeing and eluding a police officer under MCL 257.602a.

3.37 Drag Racing

A. Statute

MCL 257.626a states:

“It shall be unlawful for any person to operate any vehicle upon any highway, or any other place open to the general public, including any area designated for the parking of motor vehicles, within this state, in a speed or acceleration contest or for the purpose of making a speed record, whether from a standing start or otherwise over a measured or unmeasured distance, or in a drag race herein defined.

“‘Drag racing’ means the operation of 2 or more vehicles from a point side by side at accelerating speeds in a competitive attempt to out-distance each other over a common selected course or where timing is involved or where timing devices are used in competitive accelerations of speeds by participating vehicles. Persons rendering assistance in any manner to such competitive use of vehicles shall be equally charged as participants. The operation of 2 or more vehicles either at speeds in excess of prima facie lawfully established speeds or rapidly accelerating from a common starting point to a speed in excess of such prima facie lawful speed is prima facie evidence of drag racing and is unlawful.”

B. Elements of the Offense

- 1) Defendant operated a vehicle on a highway or any other place open to the general public, including a parking area; and
- 2) At that time, defendant was participating in a speed or acceleration contest, or was driving for the purpose of making a speed record, or was participating in a “drag race” as defined above.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or

- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

Four points. MCL 257.320a(1)(j). A conviction is reported to the Secretary of State.

3.38 Failing to Answer Citation, Appear in Court, or Comply With an Order or Judgment

A. Statute

MCL 257.321a(1) states:

“A person who fails to answer a citation, or a notice to appear in court for a violation reportable to the secretary of state under [MCL 257.732*] or a local ordinance substantially corresponding to a violation of a law of this state reportable to the secretary of state under [MCL 257.732], or for any matter pending, or who fails to comply with an order or judgment of the court, including, but not limited to, paying all fines, costs, fees, and assessments, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100.00, or both. A violation of this subsection or failure to answer a citation or notice to appear for a violation of section 33b(1) of former 1933 (Ex Sess) PA 8, section 703(1) of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1703, or a local ordinance substantially corresponding to either of those sections shall not be considered a violation for any purpose under [MCL 257.320a].”

*See Section 2.12(C) of Volume 3 of the *Traffic Benchbook* for a list of violations reportable under MCL 257.732.

B. Elements of the Offense

This statute establishes one misdemeanor offense that can be committed two ways:

- 1) Defendant failed to answer a citation or notice to appear for an offense reportable to the Secretary of State under MCL 257.732, or for any matter pending; or
- 2) Defendant failed to comply with an order or judgment of the court, including but not limited to paying all fines, costs, fees, and assessments.

These offenses are commonly referred to as failure to appear in court (FAC) and failure to comply with judgment (FCJ).

C. Criminal Penalties

MCL 257.321a(1) provides for:

- imprisonment for not more than 93 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

1) In addition to misdemeanor penalties, license suspension can result from a person's failure to answer a citation or notice to appear in court or failure to comply with a judgment. Under MCL 257.321a(2)–(4), the court is required to notify the person that license suspension may result from his or her inaction. If the person does not appear or comply with the court's order or judgment within a stated time after receiving notice from the court, the court must report this failure to the Secretary of State. Upon receipt of the report from the court, the Secretary of State is to immediately suspend the person's license. The time requirements contained in the court's notices differ depending upon the charges brought against the person.

- ♦ In cases involving offenses other than certain drunk driving and alcohol-related crimes,* the notice from the court must be mailed to the person's last known address at least 28 days after the person fails to appear or comply with an order or judgment. The notice shall state that the person's license will be suspended if he or she fails to appear or to comply with the court's order or judgment within 14 days of issuance of the notice. If the person fails to comply with this notice, the court must notify the Secretary of State within 14 days. The Secretary of State will then immediately suspend the person's license and notify the person by regular mail sent to the person's last known address. MCL 257.321a(2).

MCL 257.321a(5) requires that a license suspension imposed under §321a(2) shall remain in effect until both of the following occur:

- The court informs the Secretary of State that the defendant has appeared before the court and all matters relating to the violation are resolved; and
- The defendant has paid to the court a \$45.00 driver's license clearance fee for each failure to appear or failure to comply with a court order.

*These offense are listed in MCL 257.321a(3), which is addressed at Section 2.14(B)(1) of Volume 3 of the *Traffic Benchbook—Third Edition*.

- ♦ In cases involving parking violations, the court may give the defendant notice and ten days to appear if the defendant fails to answer two or more handicap parking violation notices or citations, or six or more parking violation notices or citations. If the defendant fails to appear or comply within ten days, the Secretary of State shall not issue or renew a driver's license to the defendant until the defendant resolves all outstanding matters and pays to the court a \$45.00 driver's license clearance fee. MCL 257.321a(7)–(8).
- 2) The last line of MCL 257.321a(1) says, “A violation of this subsection shall not be considered a violation for any purpose under section 320a.” Therefore, no points will be assessed on defendant's driving record.

E. Issues

When the defendant has appeared before the court, and all matters relating to the violation or to the noncompliance are resolved, and the defendant has paid to the court the \$45.00 driver's license clearance fee, the court shall give to the defendant a copy of the information being sent to the Secretary of State. Upon showing that copy, a person shall not be arrested or issued a citation for driving on a suspended license on the basis of any matter resolved, even if the information sent to the Secretary of State has not been received or recorded. MCL 257.321a(10).

MCL 257.321a(11) requires that the court transmit for each fee received the following amounts on a monthly basis:

“(a) Fifteen dollars to the secretary of state. The funds received by the secretary of state under this subdivision shall be deposited in the state general fund and shall be used to defray the expenses of the secretary of state in processing the suspension and reinstatement of driver licenses under this section.

“(b) Fifteen dollars to 1 of the following, as applicable:

(i) If the matter is before the circuit court, to the treasurer of the county for deposit in the general fund.

(ii) If the matter is before the district court, to the treasurer of the district funding unit for that court, for deposit in the general fund. As used in this section, ‘district funding unit’ means that term as defined in . . . MCL 600.8104.

(iii) If the matter is before a municipal court, to the treasurer of the city in which the municipal court is located, for deposit in the general fund.

“(c) Fifteen dollars to the juror compensation reimbursement fund created in section 151d of the revised judicature act of 1961, 1961 PA 236, MCL 600.151d.”

“Any policeman, law enforcing agent, or judicial officer who is informed by an official communication from the secretary of state that the secretary of state has suspended or revoked an operator’s, moped, or chauffeur’s license under the provisions of this act, shall obtain and destroy the suspended or revoked license.” MCL 257.321b.

3.39 Failing to Disclose Odometer Mileage

A. Statute

MCL 257.233a(1) states:

“When the owner of a registered motor vehicle transfers his or her title or interest in that vehicle, the transferor shall present to the transferee before delivery of the vehicle, written disclosure of odometer mileage by means of the certificate of title or a written statement signed by the transferor”

B. Elements of the Offense

- 1) Defendant transferred his or her interest in a motor vehicle to another person; and
- 2) Defendant failed to disclose the odometer mileage, or misrepresented, in writing, the actual mileage.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. A conviction is not reported to the Secretary of State. MCL 257.732(16)(c).

E. Issues

“The odometer statute in Michigan does not require the intent to defraud The main purpose behind the odometer statute is to protect a buyer from being defrauded by a seller who fraudulently turns back the odometer.” *People v Houseman*, 128 Mich App 17, 22 (1983).

“[F]ailure to comply with the odometer statute requirements merely renders the transaction voidable by the purchaser.” It does not automatically void the transaction. *Whitecraft v Wolfe*, 148 Mich App 40, 54 (1985).

A person who, with intent to defraud, violates MCL 257.233a(1) or (6) is liable in an amount equal to three times the amount of actual damages sustained or \$1,500.00, whichever is greater, plus costs and reasonable attorney fees in the case of a successful recovery of damages. MCL 257.233a(15).

The odometer statute also applies to a new or used vehicle dealer, a lessor of a leased vehicle, and an auction dealer or vehicle salvage pool operator. See MCL 257.233a(10)–(13).

Odometer tampering is a felony under MCL 257.233a(6)–(7). See Section 7.7 in Volume 3 of the *Traffic Benchbook–Third Edition*.

3.40 Failing to Stop for School Crossing Guard

A. Statute:

MCL 257.613d states:

“(1) A driver of a motor vehicle who fails to stop when a school crossing guard is in a school crossing and is holding a stop sign in an upright position visible to approaching vehicular traffic is guilty of a misdemeanor.

“(2) In a proceeding for a violation of this section, proof that the particular vehicle described in the citation, complaint, or warrant was used in the violation, together with proof that the defendant named in the citation, complaint, or warrant was the registered owner of the vehicle at the time of the violation, constitutes in evidence a presumption that the registered owner of the vehicle was the driver of the vehicle at the time of the violation.”

B. Elements of the Offense

- 1) Defendant drove a motor vehicle;

- 2) At that time, a school crossing guard, in a school crossing, held a stop sign in an upright position visible to defendant as he or she was approaching; and
- 3) Defendant failed to stop.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

Three points. MCL 257.320a(1)(p). A conviction is reported to the Secretary of State. The Secretary of State has interpreted “[d]isobeying a traffic signal or stop sign” to include this offense. A traffic signal includes “any device whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.” MCL 257.72. A school crossing guard manually operates a stop sign to alternately direct traffic to stop and to proceed.

3.41 Failing to Yield to Handicapped Individual

A. Statute

MCL 257.612(4) states:

“A driver of a vehicle who approaches a person using a wheelchair or a device to aid the person to walk at a crosswalk or any other pedestrian crossing shall take such precautions as may be necessary to avoid accident or injury to the person using the wheelchair or device. A person who violates this subsection is guilty of a misdemeanor.”

B. Elements of the Offense

- 1) Defendant drove a vehicle;
- 2) Defendant approached a person using a wheelchair or other walking aid;
- 3) The person was at a crosswalk or other pedestrian crossing; and

- 4) Defendant failed to take necessary precautions to avoid an accident or injury to the person.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

Two points. MCL 257.320a(1)(s). The Secretary of State has interpreted “[a]ll other moving violations” to include this offense. A conviction is reported to the Secretary of State.

E. Issues

The phrase “a device to aid the person to walk” may be interpreted to include the types of devices commonly used by blind persons such as a cane or a guide dog.

3.42 Falsifying or Improperly Disposing of a Citation

A. Statute

MCL 257.728d provides:

“Whoever knowingly falsifies a citation or copies thereof or a record of the issuance of same, or disposes of such citation, copy or record, in a manner other than as required in this act, or attempts so to falsify or dispose, or attempts to incite or procure another so to falsify or dispose shall be fined not more than \$500.00 or imprisoned in the county jail for a term not to exceed 1 year, or both.”

B. Elements of the Offense

This statute establishes one misdemeanor offense that can be committed three ways:

- 1) Defendant knowingly falsified a citation, a copy of a citation, or a record of the issuance of a citation or attempted to do the same; or

- 2) Defendant improperly disposed of a citation or attempted to do the same; or
- 3) Defendant attempted to incite or procured another to falsify or improperly dispose of a citation.

C. Criminal Penalties

MCL 257.728d provides for:

- imprisonment not to exceed one year; or
- fine of not more than \$500.00; or
- both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. A conviction is not reported to the Secretary of State. MCL 257.732(16)(b).

3.43 Improper Passing of a Stationary Emergency Vehicle

A. Statute

MCL 257.653a(1) states:

“(1) Upon approaching and passing a stationary authorized emergency vehicle that is giving a visual signal by means of flashing, rotating, or oscillating red, blue, or white lights as permitted by [MCL 257.698], the driver of an approaching vehicle shall exhibit due care and caution, as required under the following:

“(a) On any public roadway with at least 2 adjacent lanes proceeding in the same direction of the stationary authorized emergency vehicle, the driver of the approaching vehicle shall proceed with caution and yield the right-of-way by moving into a lane at least 1 moving lane or 2 vehicle widths apart from the stationary authorized emergency vehicle, unless directed otherwise by a police officer. If movement to an adjacent lane or 2 vehicle widths apart is not possible due to weather, road conditions, or the immediate presence of vehicular or pedestrian traffic in parallel moving lanes, the driver of the approaching vehicle shall proceed as required in subdivision (b).

“(b) On any public roadway that does not have at least 2 adjacent lanes proceeding in the same direction as the stationary authorized emergency vehicle, or if the movement by the driver of the vehicle into an adjacent lane or 2 vehicle widths apart is not possible as described in subdivision (a), the approaching vehicle shall reduce and maintain a safe speed for weather, road conditions, and vehicular or pedestrian traffic and proceed with due care and caution, or as directed by a police officer.”

B. Elements

- 1) Defendant drove a vehicle;
- 2) Defendant approached a signaling emergency response vehicle; and
- 3) On a two-lane public roadway, defendant did not approach the emergency vehicle with caution and yield the right-of-way by moving into a lane at least one moving lane or two vehicle widths apart from the emergency vehicle; or
- 4) On a public roadway without at least two adjacent lanes proceeding in the same direction as the emergency vehicle, or if the movement by the driver of the vehicle into an adjacent lane or two vehicle widths apart is not possible, the defendant failed to reduce and maintain a safe speed and proceed with due care and caution.

C. Criminal Penalties

MCL 257.653a(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$500.00 or
- both.

Note: Different penalties apply if the violation of MCL 257.653a(1) causes injury or death to a police officer, firefighter, or other emergency response personnel in the immediate area of the stationary authorized emergency vehicle. MCL 257.653a(3)–(4). See Volume 3, Section 7.13.

D. Licensing Sanctions

Four points. MCL 257.320a(1)(k). A conviction is reported to the Secretary of State.

3.44 Improper Use of Disabled Person Identification

A. Statute

MCL 257.675(15)–(16) state:

“(15) A person who intentionally makes a false statement of material fact or commits or attempts to commit a deception or fraud on a medical statement attesting to a disability, submitted in support of an application for a certificate of identification, windshield placard, free parking sticker, special registration plate, or tab for persons with disabilities under this section, section 803(d) [regarding disabled person plates], or section 803f [regarding disabled veterans and disabled person tabs], is guilty of a misdemeanor, punishable by a fine of not more than \$500.00 or imprisonment for not more than 30 days, or both.

“(16) A person who commits or attempts to commit a deception or fraud by 1 or more of the following methods is guilty of a misdemeanor, punishable by a fine of not more than \$500.00 or imprisonment for not more than 30 days, or both:

“(a) Using a certificate of identification, windshield placard, or free parking sticker issued under this section or by another state to provide transportation to a disabled person, when the person is not providing transportation to a disabled person.

“(b) Altering, modifying, or selling a certificate of identification, windshield placard, or free parking sticker issued under this section or by another state.

“(c) Copying or forging a certificate of identification, windshield placard, or free parking sticker described in this section or selling a copied or forged certificate, placard, or sticker described in this section. In the case of a violation of this subdivision, the fine described in this subsection shall be not less than \$250.00.

“(d) Using a copied or forged certificate of identification, windshield placard, or free parking sticker described in this section.

“(e) Making a false statement of material fact to obtain or assist an individual in obtaining a certificate, placard, or sticker described in this section, a special registration plate under section 803d [regarding disabled person plates], or a tab for persons with disabilities under section 803f [regarding disabled veterans and disabled person tabs].

“(f) Knowingly using or displaying a certificate, placard, or sticker described in this section that has been canceled by the secretary or state.”

B. Elements of the Offense

The elements for a violation of MCL 257.675(15) are as follows:

- 1) On a medical statement attesting to a disability, defendant intentionally does one of the following:
 - makes a false statement of material fact, or
 - commits or attempts to commit a deception or fraud; and
- 2) Defendant’s false statement or deception was submitted in support of an application for a certificate of identification, windshield placard, free parking sticker, special registration plate, or tab for persons with disabilities.

MCL 257.675(16)(a)–(f) establish six misdemeanor offenses:

- 1) Using a disabled person identification to park without transporting a disabled person:
 - Defendant was issued a disabled person identification to transport a disabled person; and
 - Defendant used the disabled person identification for the purpose of parking a vehicle in a courtesy disabled person’s spot, but did not transport a disabled person.
- 2) Altering, modifying, or selling a disabled person identification.
- 3) Copying or forging a disabled person identification, or selling a copied or forged disabled person identification.
- 4) Using a copied or forged disabled person identification.
- 5) Making a false statement of material fact to obtain (or to assist another to obtain) a disabled person identification.
- 6) Knowingly using or displaying a disabled person identification that has been canceled by the Secretary of State.

C. Criminal Penalties

MCL 257.675(15) and (16) provide for:

- imprisonment for not more than 30 days; or

- fine of not more than \$500.00; or
- both.

MCL 257.675(16)(c) provides an exception to the standard criminal penalties if a defendant is found guilty of copying or forging a disabled person identification, or selling a copied or forged disabled person identification. MCL 257.675(16)(c) requires that the court impose a fine of not less than \$250.00.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. A conviction is not reported to the Secretary of State. MCL 257.732(16)(b).

E. Issues

Upon conviction of a violation under MCL 257.675, the court may confiscate the disabled person identification and return it to the Secretary of State together with a copy of the sentence imposed. MCL 257.675(14).

3.45 Improper Use of Emergency Lights

A. Statute

MCL 257.698(5)(a)–(k) state:

“(5) The use or possession of flashing, oscillating, or rotating lights of any color is prohibited except as otherwise provided by law, or under the following circumstances:

“(a) A police vehicle shall be equipped with flashing, rotating, or oscillating red or blue lights, for use in the performance of police duties.

“(b) A fire vehicle or ambulance available for public use or for use of the United States, the state, or any unit of the state, whether publicly or privately owned, shall be equipped with flashing, rotating, or oscillating red lights and used as required for safety.

“(c) An authorized emergency vehicle as defined in [MCL 257.2]* may be equipped with flashing, rotating, or oscillating red lights for use when responding to an emergency call if when in use the flashing, rotating, or oscillating red lights are mounted on the roof section of the vehicle, either as a permanent installation or by means of

*See Section 3.46(A), below, for the definition of an emergency vehicle contained in MCL 257.2.

suction cups or magnets and are clearly visible in a 360 degree arc from a distance of 500 feet when in use. A person operating lights under this subdivision at any time other than when responding to an emergency call is guilty of a misdemeanor.

“(d) Flashing, rotating, or oscillating amber lights, placed in a position as to be visible throughout an arc of 360 degrees, shall be used by a state, county, or municipal vehicle engaged in the removal of ice, snow, or other material from the highway and in other operations designed to control ice and snow.

“(e) A vehicle used for the cleanup of spills or a necessary emergency response action taken pursuant to state or federal law or a vehicle operated by an employee of the department of natural resources that responds to a spill, emergency response action, complaint, or compliance activity may be equipped with flashing, rotating, or oscillating amber lights. Such lights shall not be activated unless the vehicle is at the scene of a spill, emergency response action, complaint, or compliance activity.

“(f) A vehicle to perform public utility service, a vehicle owned or leased by and licensed as a business for use in the collection and hauling of refuse, an automobile service car or wrecker, a vehicle engaged in authorized highway repair or maintenance, a vehicle of a peace officer, a vehicle operated by a rural letter carrier or a person under contract to deliver newspapers or other publications by motor route, a vehicle utilized for snow removal, a private security guard vehicle as authorized in subsection (7), a motor vehicle while engaged in escorting or transporting an oversize load that has been issued a permit by the state transportation department or a local authority with respect to highways under its jurisdiction, a vehicle owned by the national guard or a United States military vehicle while traveling under the appropriate recognized military authority, a motor vehicle while towing an implement of husbandry, or an implement of husbandry may be equipped with flashing, rotating, or oscillating amber lights. However, a wrecker may be equipped with flashing, rotating, or oscillating red lights which shall be activated only when the wrecker is engaged in removing or assisting a vehicle at the scene of a traffic accident or disablement. The flashing, rotating, or oscillating amber lights shall not be activated except in those circumstances that the warning produced by the lights is required for public safety.

“(g) A vehicle engaged in leading or escorting a funeral procession or any vehicle that is part of a funeral procession may be equipped with flashing, rotating, or oscillating purple or amber lights which shall not be activated except during a funeral procession.

“(h) An authorized emergency vehicle may display flashing, rotating, or oscillating white lights in conjunction with an authorized emergency light as prescribed in this section.

“(i) A private motor vehicle of a physician responding to an emergency call may be equipped with and the physician may use flashing, rotating, or oscillating red lights mounted on the roof section of the vehicle either as a permanent installation or by means of magnets or suction cups and clearly visible in a 360 degree arc from a distance of 500 feet when in use. The physician shall first obtain written authorization from the county sheriff.

“(j) A public transit vehicle may be equipped with a flashing, oscillating, or rotating light mounted on the roof of the vehicle approximately 6 feet from the rear of the vehicle which displays a white light to the front, side, and rear of the vehicle, which light may be actuated by the driver for use only in inclement weather such as fog, rain, or snow, when boarding or discharging passengers, from 1/2 hour before sunset until 1/2 hour after sunrise, or where conditions hinder the visibility of the public transit vehicle. As used in this subdivision, ‘public transit vehicle’ means a motor vehicle, other than a station wagon or passenger van, with a gross vehicle weight rating of more than 10,000 pounds.

“(k) A person engaged in the manufacture, sale, or repair of flashing, rotating, or oscillating lights governed by this subsection may possess the lights for the purpose of employment, but shall not activate the lights upon the highway unless authorized to do so under subsection (6).”

B. Element of the Offense

Defendant used or possessed emergency lights when he or she was not authorized to do so.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

Two points. MCL 257.320a(1)(s). The Secretary of State has interpreted “[a]ll other moving violations” to include this offense. A conviction is reported to the Secretary of State.

3.46 Improper Use of Emergency Vehicle

A. Statute

MCL 257.603(2)–(5) set forth the privileges that a driver of an authorized emergency vehicle may exercise, as follows:

“(2) The driver of an authorized emergency vehicle when responding to an emergency call, but not while returning from an emergency call, or when pursuing or apprehending a person who has violated or is violating the law or is charged with or suspected of violating the law, may exercise the privileges set forth in this section, subject to conditions of this section.

“(3) The driver of an authorized emergency vehicle may do any of the following:

“(a) Park or stand, irrespective of this act.

“(b) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation.

“(c) Exceed the prima facie speed limits so long as he or she does not endanger life or property.

“(d) Disregard regulations governing direction of movement or turning in a specified direction.

“(4) The exemptions granted in this section to an authorized emergency vehicle apply only when the driver of the vehicle while in motion sounds an audible signal by bell, siren, air horn, or

exhaust whistle as may be reasonably necessary . . . and when the vehicle is equipped with [and] displaying [emergency lights].

“(5) A police vehicle shall retain the exemptions granted in this section to an authorized emergency vehicle without sounding an audible signal if the police vehicle is engaged in an emergency run in which silence is required.”

Authorized emergency vehicles include “[v]ehicles of the fire department, police vehicles, ambulances, or privately owned motor vehicles of volunteer or paid fire fighters if authorized by the chief of an organized fire department, or privately owned motor vehicles of volunteer or paid members of a life support agency licensed by the department of consumer and industry services if authorized by the life support agency.” MCL 257.2.

B. Elements of the Offense

This statute clearly sets out the elements of this offense.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

Two points. MCL 257.320a(1)(s). The Secretary of State has interpreted “[a]ll other moving violations” to include this offense. A conviction is reported to the Secretary of State.

E. Issues

“The speed limitation set forth in this chapter shall not apply to vehicles when operated with due regard for safety under the direction of the police when traveling in emergencies or in the chase or apprehension of violators of the law or of persons charged with or suspected of a violation, nor to fire department or fire patrol vehicles when traveling in response to a fire alarm, nor to public or private ambulances when traveling in emergencies This exemption shall not however protect the driver of the vehicle from the consequences of a reckless disregard of the safety of others.” MCL 257.632.

The driver of an authorized emergency vehicle has a duty to drive with due regard for the safety of others and does not have an absolute right to blindly

proceed through a red light or stop sign. *Placek v City of Sterling Heights*, 405 Mich 638, 670 (1979).

3.47 Moving Violation Causing Injury to Highway Construction Worker

A. Statute

MCL 257.601b(2) states:

“A person who commits a moving violation for which not fewer than 3 points are assigned under [MCL 257.320a] and as a result causes injury to a person working in the work zone is guilty of a misdemeanor”

B. Elements

- 1) Defendant commits a moving violation that requires the assessment of three or more points under MCL 257.320a; and
- 2) Defendant’s violation causes injury to a person working in the work zone.

C. Criminal Penalties

A violation of MCL 257.601b(2) is punishable by:

- imprisonment for not more than one year; or
- fine of not more than \$1,000.00; or
- both.

D. Licensing Sanctions

Six points. MCL 257.320a(1)(b). A conviction is reported to the Secretary of State. The Secretary of State shall suspend the person’s license for 90 days. MCL 257.319(3)(b). License revocation is required for a person who has two convictions for violations of MCL 257.601b(2) within seven years. MCL 257.303(5)(b)(ii).

3.48 Moving Violation Causing Injury to Person Operating Farm Equipment

A. Statute

MCL 257.601c(1) states:

“A person who commits a moving violation that has criminal penalties and as a result causes injury to a person operating an implement of husbandry on a highway in compliance with this act is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.”

“Implement of husbandry” is defined in MCL 257.21 as “a vehicle which is either a farm tractor, a vehicle designed to be drawn by a farm tractor or an animal, a vehicle which directly harvests farm products, or a vehicle which directly applies fertilizer, spray, or seeds to a farm field.”

B. Elements

- 1) Defendant committed a moving violation with criminal penalties;
and
- 2) Defendant’s violation caused injury to a person operating farm equipment.

C. Criminal Penalties

MCL 257.601c(1) provides for:

- imprisonment for not more than one year; or
- fine of not more than \$1,000.00; or
- both.

D. License Sanctions

Six points. MCL 257.320a(1)(b). A conviction is reported to the Secretary of State. The Secretary of State shall suspend the person’s license for 90 days. MCL 257.319(3)(b). License revocation is required for a person who has two convictions for violations of MCL 257.601c(1) within seven years. MCL 257.303(5)(b)(ii).

3.49 Reckless Driving

A. Statute

MCL 257.626(1)–(2) state:

“(1) A person who drives a vehicle upon a highway or a frozen public lake, stream, or pond or other place open to the general public, including, but not limited to, an area designated for the parking of motor vehicles, in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

“(2) A person who violates subsection (1) is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or by both.”

B. Elements of the Offense

- 1) Defendant drove a vehicle on a highway, or a frozen public lake, stream, or pond, or place open to the general public, including parking areas; and
- 2) At that time, defendant was driving in willful or wanton disregard for the safety of persons or property.

C. Criminal Penalties

MCL 257.626(2) provides for:

- imprisonment for not more than 93 days; or
- fine of not more than \$500.00; or
- both.

D. Licensing Sanctions

Six points. MCL 257.320a(1)(e). A conviction is reported to the Secretary of State.

1. First Offense

License suspension for 90 days is mandatory for a conviction of reckless driving. MCL 257.319(3)(b).

*The fee is assessed for violation of a Michigan law or ordinance, or a substantially corresponding law of another state.

The Secretary of State is required to impose a \$500.00 driver responsibility fee for a conviction of MCL 257.626. MCL 257.732a(2)(b)(ii).^{*} The fee shall be assessed for two consecutive years. Failure to pay a driver responsibility fee within the time prescribed will result in license suspension. MCL 257.732a(3), (5).

2. Second Offense

License revocation is required for a person who has two convictions of reckless driving within seven years. MCL 257.303(5)(a).

E. Issues

Mere falling asleep is not gross negligence; gross negligence requires willful or wanton misconduct. “To constitute gross negligence in falling asleep while driving, there must have been prior warning of the likelihood of sleep that continuing to drive constitutes reckless disregard of consequences.” *Boos v Sauer*, 266 Mich 230, 233 (1934).

“[M]ere excessive speed does not constitute gross negligence Intoxication is not necessarily indicative of willful and malicious misconduct.” *Bielawski v Nicks*, 290 Mich 401, 404–405 (1939). A driver may be guilty of driving a vehicle at an unlawful or reckless rate of speed although the speed of the vehicle is shown to be less than the legal maximum. *Hammock v Sims*, 313 Mich 248, 257 (1946).

Mere failure or inadvertence or lack of care is, at most, ordinary negligence and will not sustain charge of recklessness or gross negligence. *Walden v Green*, 346 Mich 21, 24 (1956).

In summary, the difference between reckless driving, a misdemeanor, and careless driving,^{*} a civil infraction, is the degree of negligence. The court should consider the manner of operating the vehicle, not the accident that results. Reckless driving requires gross negligence, which is defined as driving in “willful or wanton disregard for the safety of persons or property.” MCL 257.626(1). Careless driving requires ordinary negligence, which is defined as operating a motor vehicle in a “negligent manner likely to endanger any person or property, but without wantonness or recklessness.” MCL 257.626b.

Gross negligence means more than carelessness. In *People v Orr*, 243 Mich 300, 307 (1928), the Michigan Supreme Court articulated three necessary elements that must be found:

“(1) Knowledge of a situation requiring the exercise of ordinary care and diligence to avert injury to another.

“(2) Ability to avoid the resulting harm by ordinary care and diligence in the use of the means at hand.

*See Section 2.12 of this volume for a discussion of careless driving.

“(3) The omission to use such care and diligence to avert the threatened danger when to the ordinary mind it must be apparent that the result is likely to prove disastrous to another.”

Careless driving is a civil infraction, and therefore not a lesser included offense of a criminal offense. MCL 257.907(1). If the prosecuting attorney, in a plea bargain, decides to reduce the charge from reckless driving to careless driving, it is necessary to have a citation issued for a civil infraction, to which the defendant can then plead responsible. See Section 2.12 of this volume for a discussion of careless driving.

3.50 Tampering With or Removing Traffic Control Devices

A. Statutes

MCL 257.616 states:

“No person shall without lawful authority attempt to or in fact alter, deface, injure, knock down, or remove any traffic-control device or any railroad sign or signal or any inscription, shield, or insignia thereon, or any other part thereof.”

MCL 257.70 provides that traffic control devices include:

“all signs, signals, markings, and devices not inconsistent with this act placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic.”

B. Elements of the Offense

- 1) Defendant altered, defaced, injured, knocked down, or removed a traffic-control device or railroad sign, or attempted to do such; and
- 2) Defendant did so without lawful authority.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days in jail; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. A conviction is not reported to the Secretary of State. MCL 257.732(16)(b).

3.51 Transporting or Possessing Open Alcohol in a Motor Vehicle

A. Statute

MCL 257.624a provides as follows:

“(1) Except as provided in subsection (2), a person who is an operator or occupant shall not transport or possess alcoholic liquor in a container that is open or uncapped or upon which the seal is broken within the passenger compartment of a vehicle upon a highway, or within the passenger compartment of a moving vehicle in any place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, in this state.

“(2) A person may transport or possess alcoholic liquor in a container that is open or uncapped or upon which the seal is broken within the passenger compartment of a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles in this state, if the vehicle does not have a trunk or compartment separate from the passenger compartment, the container is enclosed or encased, and the container is not readily accessible to the occupants of the vehicle.

* * *

“(4) This section does not apply to a passenger in a chartered vehicle authorized to operate by the state transportation department.”

B. Elements of the Offense

- 1) Defendant was an operator or occupant of a motor vehicle at the time of the alleged offense; and
- 2) Defendant transported or possessed alcohol in a motor vehicle on a highway, *or*
- 3) Defendant transported or possessed alcohol in a moving vehicle in any place open to the general public or generally accessible to motor vehicles, including an area designated for parking; and

- 4) The alcohol was in a container that was open, uncapped, or had a broken seal and was within the passenger compartment of the vehicle.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

A person convicted of violating MCL 257.624a may be ordered to perform community service and undergo substance abuse screening and assessment at his or her expense. MCL 257.624a(3).

D. Licensing Sanctions

Two points. MCL 257.320a(1)(q). Only a driver's conviction is reported to the Secretary of State. MCL 257.732(16)(d).

1. Second Offense

If the defendant has one prior conviction for a violation of MCL 257.624a, MCL 257.624b, MCL 436.1703, or former MCL 436.33b(1), the Secretary of State shall suspend the defendant's driver's license for 90 days. A restricted license may be issued after the first 30 days of suspension. MCL 257.319(7). A "conviction" includes "a juvenile adjudication, probate court disposition, or juvenile disposition. . . ." MCL 257.8a(a). "Juvenile adjudication" refers to delinquency adjudications in other states. MCL 257.23a(b). "Probate court disposition" and "juvenile disposition" mean a disposition entered under MCL 712A.18. MCL 257.23b and MCL 257.44a.

2. Third or Subsequent Offense

If the defendant has two or more prior convictions for violations of MCL 257.624a, MCL 257.624b, MCL 436.1703, or former MCL 436.33b(1), the Secretary of State shall suspend the defendant's driver's license for one year. A restricted license may be issued after the first 60 days of suspension. MCL 257.319(7).

*MCL 257.625(6) prohibits persons under age 21 from driving with “any bodily alcohol content.” See Volume 3, Section 3.6.

E. Issues

“A court shall not accept a plea of guilty of nolo contendere for a violation of [MCL 257.624a] from a person charged solely with a violation of [MCL 257.625(6)].”*

MCL 257.624a(2) provides that a person does not violate this statute by transporting open intoxicants in the passenger compartment of a motor vehicle that does not have a separate trunk compartment if:

- The open container is enclosed or encased; and,
- The open container is not readily accessible to the occupants of the vehicle.

This misdemeanor offense formerly appeared in the Michigan Liquor Control Law under MCL 436.34a. The language of that statute was rewritten and now appears in the Motor Vehicle Code under §624a. The new language in subsection (2) clarifies the responsibilities of a person operating a motor vehicles without a trunk or compartment separate from the passenger compartment. Moreover, the word “moving” was added to subsection (1) so that “tailgate” parties would not be made illegal. See 1991 PA 98, effective August 9, 1991.

3.52 Transporting or Possessing Alcohol in a Motor Vehicle by a Person Less Than 21 Years of Age

A. Statute

MCL 257.624b(1) states:

“A person less than 21 years of age shall not knowingly transport or possess alcoholic liquor in a motor vehicle as an operator or occupant unless the person is employed by a licensee under the Michigan liquor control code . . . , a common carrier designated by the liquor control commission . . . , the liquor control commission, or an agent of the liquor control commission and is transporting or having the alcoholic liquor in a motor vehicle under the person’s control during regular working hours and in the course of the person’s employment. This section does not prevent a person less than 21 years of age from knowingly transporting alcoholic liquor in a motor vehicle if a person at least 21 years of age is present inside the motor vehicle. A person who violates this subsection is guilty of a misdemeanor. As part of the sentence, the person may be ordered to perform community service and undergo substance abuse screening and assessment at his or her own expense as described in . . . MCL 436.1703.”

B. Elements of the Offense

- 1) Defendant was less than 21 years of age and was the operator or occupant of a motor vehicle; and
- 2) Defendant transported or possessed alcoholic liquor in the motor vehicle.

MCL 257.624b(1) provides exceptions for persons who are lawfully transporting alcoholic liquor as part of their employment, and persons who are accompanied by someone over 21 years of age in the motor vehicle.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

The court may also order the defendant to perform community service and undergo substance abuse screening and assessment at his or her own expense. MCL 257.624b(1).

D. Licensing Sanctions

Two points. MCL 257.320a(1)(q). Only a driver's conviction is reported to the Secretary of State. MCL 257.732(16)(d).

1. Second Offense

If the defendant has one prior conviction for a violation of MCL 257.624a, MCL 257.624b, MCL 436.1703, or former MCL 436.33b(1), the Secretary of State shall suspend the person's driver's license for 90 days. A restricted license may be issued after the first 30 days of suspension. MCL 257.319(7).

A "conviction" includes "a juvenile adjudication, probate court disposition, or juvenile disposition. . . ." MCL 257.8a(a). "Juvenile adjudication" refers to delinquency adjudications in other states. MCL 257.23a(b). "Probate court disposition" and "juvenile disposition" mean a disposition entered under MCL 712A.18. MCL 257.23b and 257.44a.

2. Third or Subsequent Offense

If the defendant has two or more prior convictions for violations of MCL 257.624a, MCL 257.624b, MCL 436.1703, or former MCL 436.33b(1), the Secretary of State shall suspend the person's driver's license for one year. A

restricted license may be issued after the first 60 days of suspension. MCL 257.319(7).

E. Issues

Impoundment of the vehicle shall be authorized by court order for a period of not less than 15 days or more than 30 days, “[i]f the court determines upon the hearing of the order to show cause, from competent and relevant evidence, that at the time of the commission of the violation the motor vehicle was being driven by the person less than 21 years of age with the express or implied consent or knowledge of the owner in violation of subsection (1), and that the use of the motor vehicle is not needed by the owner in the direct pursuit of the owner’s employment or the actual operation of the owner’s business. . . .” MCL 257.624b(3).

To start, a complaint must be filed by the arresting officer or the officer’s superior within 30 days after the conviction becomes final requesting that the motor vehicle be impounded. The court shall then issue an order for a hearing to the owner of the motor vehicle to show cause why the motor vehicle should not be impounded. The hearing date in the order shall not be less than ten days after the issuance of the order. The order shall be served by delivering a true copy to the owner, or if the owner cannot be located by sending a true copy by certified mail, not less than three full days before the hearing date. MCL 257.624b(2).

The court order authorizing impoundment allows a law enforcement officer to take possession wherever the motor vehicle is located and to store the vehicle in a public or private garage at the expense and risk of the owner. MCL 257.624b(3).

“A person who knowingly transfers title to a motor vehicle for the purpose of avoiding this section is guilty of a misdemeanor.” MCL 257.624b(4).